

THE MINUTES OF THE REGULAR CITY COUNCIL MEETING HELD  
MONDAY, APRIL 10, 2000 AT 1:30 P.M.

The Meeting was called to order at 1:30 p.m. Present: Council Chairperson Seng; Council Members: Camp, Cook, Fortenberry, Johnson, McRoy, Shoecraft; Paul A. Malzer, Jr., City Clerk.

The Council stood for a moment of silent meditation.

READING OF THE MINUTES

COOK Having been appointed to read the minutes of the City Council proceedings of April 3, 2000, reported having done so, found same correct.

Seconded by Fortenberry & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

PUBLIC HEARING

APP. OF 210 N. 7TH ST. LLC DBA DINAPOLI RISTORANTE & VINERIA FOR A RETAIL CLASS I LIQUOR LICENSE AT 201 N. 7TH ST.;

MAN. APP. OF TIMOTHY PAUL BURKE FOR 201 N. 7TH ST., LLC. DBA DINAPOLI RISTORANTE & VINERIA AT 201 N. 7TH ST. - Timothy Burke, no address given, applicant, came forward & took oath: It's an Italian restaurant going in the Haymarket. We currently have a restaurant in Boulder, Colorado right now with a liquor license in good standing for 2 yrs. Both Terry Humphrey, my partner, & I are from Nebraska & we decided to come home & let our dream come true & open a restaurant in Lincoln. Is there any questions?

Cindy Johnson, Council Member: We've mandated some management training courses & have you signed up for that or are you aware of it?

Mr. Burke: Absolutely. I'm working with Rand right this second to set something up right now.

Jeff Fortenberry, Council Member: Where is this?

Mr. Burke: It's formerly Inn Harms Way. It's in the Lincoln Station, 201 N. 7th.

Mr. Fortenberry: Well, it's a great location.

Mr. Burke: It is definitely, definitely.

Jon Camp, Council Member: Well & as a resident of Haymarket now for 18 yrs., I welcome you & wish you the best in luck.

Mr. Burke: Thank you very much.

This matter was taken under advisement.

CHANGE OF ZONE 3196 - APP. OF THE INTERIM PLANNING DIRECTOR FOR A CHANGE FROM B-1 LOCAL BUSINESS & R-3 RESIDENTIAL TO B-2 PLANNED NEIGHBORHOOD BUSINESS & FROM R-3 RESIDENTIAL TO AGR AGRICULTURAL RESIDENTIAL, ON PROPERTY GENERALLY LOCATED AT S. CODDINGTON AVE. & W. VAN DORN ST. (IN CONNECTION W/00-66, 00-67, 00-68) (Item #4);

CHANGE OF ZONE 3210 - APP. OF THE INTERIM PLANNING DIRECTOR FOR A CHANGE FROM R-3 RESIDENTIAL TO AGR AGRICULTURAL RESIDENTIAL ON PROPERTY GENERALLY LOCATED AT THE SOUTHWEST CORNER OF S. CODDINGTON AVE. & W. VAN DORN ST.; FROM R-3 RESIDENTIAL TO AG AGRICULTURAL ON PROPERTY GENERALLY LOCATED SOUTH OF W. VAN DORN ST., EAST OF CODDINGTON AVE., & WEST OF THE BNRR RIGHT-OF-WAY; & FROM R-3 RESIDENTIAL TO P PUBLIC USE ON PROPERTY GENERALLY LOCATED SOUTHEASTERLY OF THE BNRR RIGHT-OF-WAY SOUTH OF W. VAN DORN, NORTH OF W. CALVERT, & EAST OF S.W. 15TH ST. EXTENDED NORTH OF W. CALVERT ST. (IN CONNECTION W/00-65, 00-67, 00-68) (Item #5);

CHANGE OF ZONE 3247 - APP. OF THE INTERIM PLANNING DIRECTOR FOR A CHANGE FROM AGR AGRICULTURAL RESIDENTIAL & R-3 RESIDENTIAL TO B-2 PLANNED NEIGHBORHOOD BUSINESS, ON PROPERTY GENERALLY LOCATED ON THE SOUTHWEST CORNER OF S. CODDINGTON AVE. & W. VAN DORN ST. (IN CONNECTION W/00-65, 00-66, 00-68) (Item #6);

CHANGE OF ZONE 3209 - APP. OF THE ASSISTANT PLANNING DIRECTOR FOR A CHANGE FROM I-1 INDUSTRIAL TO R-3 RESIDENTIAL & FROM I-1 INDUSTRIAL, B-1 LOCAL BUSINESS, & H-4 GENERAL COMMERCIAL TO P PUBLIC USE, ON PROPERTY GENERALLY

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LOCATED AT HWY. 77 & W. VAN DORN ST. (IN CONNECTION W/00-65, 00-66, 00-67) (Item #7) - Steve Henrichsen, Planning Dept.: Generally, this is just something we have been working on during the past 9 months out in the W. "A" area. There's certainly quite a lot of things going on. There's a lot of new construction. It's rapidly becoming an area that is no longer remote from the City of Lincoln. We have new subdivisions. Rick Krueger has one underway. Lee's Place, Vestecka's, Villa Van Dorn, Hartland Homes West, numerous new residential subdivisions. Roper Elementary school has opened within the last 6 yrs. The Bison Trail should be getting under construction later this summer. But, certainly, with all of these new construction, there's certainly a lot of challenges as well. Getting a sidewalk built along Coddington to the new Roper Elementary School, to Pioneers Park, is something the City's continuing to work on. And, certainly, improvements to W. "A" St. that were mentioned with the Coddington Park commercial area & other road improvements, there's things that are underway as well. Partly as a result of looking at these various change of zones in the area, we realize that there's a very large area along W. Van Dorn St. from Coddington over to the new Homestead Heritage Expressway that in that area there was a lot of zoning that really dated back to the 1950's & did not either reflect the current land use or reflect what we thought was a good zoning pattern for protecting this area that is now becoming very much a suburban area, protecting the entryway & also protecting three very important Capitol View Corridors out of Pioneers Park to the State Capitol. And so, it was at that time that we took one of these proposals first to the Capitol Environs Commission in June of last year, got their recommendation to move forward with changing the B-1 zoning to B-2 zoning at the corner of Coddington & Van Dorn. We then spent the next several months visiting with a lot of the property owners. This was before the Planning Commission in November. A few property owners expressed concern about it. We then had it placed on Pending until January to allow some additional time to talk with property owners. The Planning Commission recommended approval on Jan. 26th but even after that approval of the first three change of zones we still had two property owners who'd expressed some concern, met with them further. I brought forward a fourth application to try to work out the concern of the property owner on the southwest corner. And is now as it is before you today, it generally...the change of zone covers over 200 acres but less than 1% of the change of zone now affects privately owned property. And of the approx. 7 privately owned property owners, I believe all are generally in favor of this application. I believe you will hear from David Hunter, who owns property on the southeast corner, expressing his concerns about it. But we felt really that their issue is one of expanding the commercial zoning & would be best handled at a future date separately. So, we have tried to work with property owners. We've made various changes in it to try to work this out as much as possible but is really just an attempt to try to cover the existing zoning pattern out there to bring it into...bring it up to date & bring it into something that will be beneficial to this really quite unique & nice part of Lincoln. No small task but we have very much tried to go slowly & to try to address as many of the concerns that were brought forward to us.

David Hunter, 1023 Lincoln Mall: I'm a member of Stockwell Properties, LLC which is the owner of the property on the southeast corner. One of the issues here, I think, that needs to be discussed is we purchased this land at State auction several months ago. The City was aware that this land was coming up for State auction. It was B-1 at the time. And the reason I know that the City was aware of it is because any time the State of Nebraska disposes of property they have to let the local political subdivision know & see if there's any use for it & see if that subdivision would care to purchase this property. When we purchased this property, we negotiated with several perspective tenants and/or building occupants to purchase this property under the auspices that it was B-1. We purchased the property unbeknownst to us that there was any movement to downzone this property from B-1 to B-2. Here we are the proud owner of a B-1 piece of property that's in the process & in front of you to be downzoned to B-2. This original application did have our R-3 going to AG

which would've been even a more dramatic downzone. However, the Planning Dept. has decided to amend that application & just downzone our B-1 to B-2. And they like to just say this is no big deal, this is really no big deal. It is a big deal because when you go from B-1 to B-2, there's special provisions required regarding special use permit, etc., etc. where there isn't on a B-1. And they like to use the fact that it's in the Capitol Environs. Well, I couldn't vote on the Capitol Environs Commission & I abstained from voting because I'm on that Commission & I own the property. But I do know, being on that Commission, that we could not erect anything in violation of the Corridor or the View Corridor without the approval of the Capitol Environs Commission & this body if we wanted to amend it. So, downzoning this to B-2 accomplishes nothing in the Capitol View Corridor. Because the rules still apply whether it be B-1 or B-whatever. The rules are no different. And all this is is downzoning. And it's downzoning after a legitimate purchase. No matter how you try to deal with this. That's exactly what it is. And it's inappropriate. Now, we have B-1 property on the corner & then surrounding us we own R-3 property. If this Council would be willing to entertain a delay & a postponement of our part of the transaction, we would either disapprove the downzoning or delay it & we would come in with a use permit to rezone the whole situation as B-2. Right now, we lose. There's no bonus for us. There's no net gain. We lose. So, therefore, we would look very favorably on doing away with our B-1 to B-2 if we could take our R-3 & put it at the B-2 level so that we can have a net gain. This way we have a net loss. And I don't think that's appropriate nor do I think it's fair. Especially when this property was up for legitimate sale, the whole world knew it, & this application should've come forward with the State. In fact, they have just done this with the State on part of this 'cause they knew the State had remaining property that it wanted to auction & they've taken it to AG. So, you can't tell me that they don't do that because they are doing it here & they have done it in the past. So, we consider this a taking. We consider it a financial taking & we consider it an unfair practice than in an involuntary mode, I do not believe this Council should act on these type of situations in this type of mode. Questions?

Ms. Johnson: So, the item that you would almost like to have put on Pending till you can come back with a use permit, correct?

Mr. Hunter: A general use permit, not a specific use permit.

Ms. Johnson: Is it #4? Is that the one that you're...

Mr. Hunter: This thing's so confusing, I don't know what it is. It's the southeast corner. Steve would have to tell you which one was us.

Ms. Johnson: Well, if we do decide to do that, Steve, I need to know which item that is that he's addressing.

Mr. Henrichsen: That would be Items #4 & also #6.

Ms. Johnson: Four & six?

Mr. Henrichsen: Right. Number 6 because it has a very small part of the B-2, it needs to be part of the larger B-2. So, Number 4 & Number 6 are the two that are related to this.

Ms. Johnson: Do you have any concerns or questions about what David's requesting?

Mr. Henrichsen: Well, yes. In general, our thought on this has been that the expansion of the B-2 area is one that should be separately addressed. Rick Krueger, who owns land on the northeast corner, northeast of Lee's Chicken, has also applied to expand the area of the B-2. But he has had that change of zone on hold waiting. At some point he has decided he will submit a use permit & that'll be before you in the future. And so, we felt similar to Rick Krueger's that's the expansion of this should really be addressed in the future separately. This proposal treats all three property owners, the Lee's Chicken property in the northeast corner, the ice cream stand in the southwest corner, & this undeveloped property on the southeast, treats them all the same, proposing a change of zoning from B-1 to B-2 on all three corners.

Ms. Johnson: Thank you.

Mr. Hunter: Now, we do not need to do the postponement & do the special use permit, now, if the Council elects not to downzone us. You could vote no on our corner & leave it as is because we're eventually

going to come in to develop the R-3. You have no risk in the B-1 other than we don't have to come to you for special use permit. Someone says well, you could put a billboard up there, you could do this, you could do that. We could do certain things as long as it's in compliance with the View Corridor. So, I don't think the risk is that great. We don't own that much B-1.

Jonathan Cook, Council Member: The area that you would like to have rezoned the R-3, we would rezone it to anything other than B-2 if we were to do that. I guess my question is if that is what you're interested in having happen, I don't see that this being B-2 would put any additional burden on you as far as the use permit stage because you'd just get a use permit over a larger area but you'd still need to go through the process with a use permit.

Mr. Hunter: You hit the nail on the head. Be realistic on cost. I can develop the B-1 today as we purchased it as we did without any incurment of soft costs. That's a big issue in the development community today. We purchased this property to develop as is, where is B-1. Don't tell me that I don't lose anything by dropping it from B-1 to B-2 because I have a financial loss & a financial taking. It's a downzone. Nothing more, nothing less. Now, if you want to give us a bonus, we'll give you

the B-1 to B-2 but you give us the R-3/B-2 also. Don't take my property, our property, & give us nothing in return. That's blatantly inverse condemnation in the most rigid way.

Mr. Cook: I have a question for Steve regarding the Capitol View Corridors. David is saying that there'd need to be approval of things that are within the Capitol View Corridor, I guess signs or buildings might be obstructing the view, is that the case here or are we actually protected?

Mr. Henrichsen: In this part of the property, that is not the case. Capitol Environs Dist., that area surrounding the State Capitol itself, generally along Lincoln Mall, 15th St., etc., certainly those type of applications, new construction is all reviewed in that Capitol Environs immediately around the Capitol. Areas of the View Corridors, that is something different. For instance, there's a view corridor up N. 27th St. & you think about the signs & things built along N. 27th St. Being in the Capitol View Corridor, the Capitol Environs Commission has no review of the View Corridors, just of it's environs around the Capitol. That was one of the reasons we had recommended the change from B-1 to B-2 so that pole signs or off-premise signs would have to be reviewed by the Capitol Environs Commission. As it is today with the existing B-1, a pole sign or an off-premise sign, which is allowed in the B-1, could be built there today & the Capitol Environs Commission would have absolutely no review over that at all. You would just go get your building permit.

Mr. Hunter: Something doesn't make sense here because the Capitol Environs Commission, which I want to reiterate I'm a member of, just reviewed a tower 3 months ago that was in the corridor up off the Interstate. Don't tell me we don't have the authority nor do applications come to us to review in the Corridor. If they're coming to us to review in the Corridor & we don't have jurisdiction, then why are they coming?

Mr. Henrichsen: There have been some towers that have come forward on a voluntary basis to have the Capitol Environs Commission review them. But, again, in the Capitol View Corridors, the Capitol Environs Commission does not have legal jurisdiction.

Mr. Hunter: Well, assuming he's correct, then you should not be downzoning on an issue just because it's in an area.

Ms. Seng: Jeff, ask him a question or Steve?

Mr. Fortenberry: Only that I see that somebody named Hunter voted for this a few weeks ago.

Mr. Hunter: I asked her about that before I came over here & on the Planning Commission & she indicated that she was told it did not include our property. So, if it did include our property, she was in error & should have declared a conflict but she said that she had because originally in the application she declared a conflict & totally left the room.

Mr. Fortenberry: I had a question for Steve. What about the issue of downzoning?

Mr. Henrichsen: We had initially checked with Rick Peo of the City Attorney's Office & discussed the change from the B-1 to the B-2. Both the B-1 & the B-2 allow commercial uses. The differences have to do with the setbacks between the B-1 & the B-2 & also the B-2 having a use permit requirement. In discussing this with Rick Peo, he didn't feel that this issue was a taking. Certainly, Dana Roper could discuss that issue further with you but that was his verbal comment based on as I had generally described the circumstances. If I could also just clarify, the one Change of Zone 3196 which does involve Mr. Hunter's property, on that Linda Hunter had declared a conflict of interest & did not vote. On Change of Zone 3210, we had removed the additional 3 acres of Mr. Hunter's property so Linda Hunter did vote on that one because it no longer included that property.

Ms. Seng: Jon Camp, did you have a question?

Mr. Camp: Yes, I was trying to reiterate here, David, what's the size of your current B-1 parcel?

Mr. Hunter: What it is about...right at 1.5...a little over 1.5 by square footage.

Mr. Camp: Do you have an idea of what the R-3 area is?

Mr. Hunter: It's the balance of 3.05. Give or take.

Ms. Seng: Any other questions? David, thank you.

Mr. Hunter: Thank you. We do consider this a taking. I don't care what the Law Dept. thinks. We suffer a loss. Thank you.

Lynn Darling, 2601 SW 23rd St.: One of the local residents in the area & I spoke to you before concerning, number one, the larger AG area here to be returned for the trail goes through & I am very, very much in favor of returning that to AG since that is divided & will not have City services. Concerning the area that Mr. Hunter was talking about, I'm asking you to keep that R-3, number one. I think our Planning Dept. has been hired & are professionals & that they know what they're doing & that they are being fair to our neighborhood & they do have us in mind. Mister Hunter, as I see it, does not want this changed for his own personal benefit. And I very much am asking you to also think of the neighbors benefits too. And when they are going to treat all three areas in the same manner, I think that's most appropriate. And when it comes to being fair, I know there's no such thing in the world as being fair. That's life. But I'm asking you to pay attention to our Planning Dept. that is hired & does know what they're doing & to keep in mind that there are those of us that live in the neighborhood that do not want people coming in & doing "as I damn well please". I would like to have you be sensitive to that. Thank you.

Don Linscott, 5101 Central Park Dr., Suite 100: Also a member of Stockwell Properties that owns the property. And when...this discussion has been going on for some months & I think that we are willing to work with the Council, work with the City in trying to figure out the best use of the property & we have said, we would like to come in & the problems I know we have in trying to zone this B-2 without the use permit becomes very difficult. So, I think that, you know, the Council has kind of looked at this as the idea that you need a use permit & the zoning at the same time & I think if we were given a little bit of time, we're willing to come in on a generic use permit to allow you to see what's going to happen in the area. I have met with the neighbors & I said, you know, we tried & work with the neighbors also on the piece. So, we are not opposing doing something with the property but I think that, as David has mentioned, taking it from the B-1 & not allowing us then to come in & work with you on a good plan that would show the B-2 with the use permit, that's what I think we're trying to ask for. That way we've got something that at least the neighbors have looked at, the Council has looked at, our Planning Dept. has looked at & then we all know what we're getting into & we don't run into the problem where we're zoning a piece & then coming back later on a use permit & no one knows what is going to happen. So, we're willing to work with everybody if we have a little bit of time to be able to do that. So, that's what we're really requesting.

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Ms. Darling: Excuse me, he did not meet with the neighbors. We called him to find out what the information was & he has not talked to any of the other neighbors in the whole neighborhood.

Ms. Seng: We've already heard. Thank you.

Mike Rierden, 645 "M" St., Suite 200, appearing on behalf of Clarice Loomis: Clarice is the owner of the Dairy Queen-type of store on the southwest corner & we're just here in support of the Planning Dept.'s recommendations to change the property to B-2. Because of the acreage requirements in the B-2, we're sort of tied to the additional B-2 in the area. We don't necessarily object to a continuance at this point in time if that's what you opt to do but we are in support of the Planning Staff recommendation. Thank you.

Mr. Fortenberry: That Dairy Queen isn't going away is it?

Mr. Rierden: Not for quite a while, Jeff.

Mr. Fortenberry: Planning, as you've heard what's been recommended, how do you react to that?

Mr. Henrichsen: Well, we were aware in advance, from discussions with Mr. Linscott & Mr. Hunter, that they were going to ask for this item to be put on Pending or at least their two particular items that affect their property to go on pending. Really, I feel, again, like the expansion of the commercial use is really something that is best separately addressed. This is an item that we have been under discussion with property owners for the last 9 months on. I have met with Mr. Linscott last September, met with Mr. Hunter in November to discuss this further as well as well as in the last few weeks as well. And that the expansion of it is really something that should be handled separately. These three corners were part of...feel like, again, they should each be treated equally & we're just trying to address the existing situation not any expansion of it. As was mentioned by Mr. Cook that a use permit would be required if they came in to expand the area or if it just ended up with a smaller area as well & that a use permit would be also a requirement to the other two property owners should they choose to redevelop their property. And I would also not like to see the Dairy Sweet go away & we had talked with Ms. Loomis about that as well. But, certainly, as down the road as she looks certainly...particularly as more & more houses are built in this area, there may be somebody down the road who makes her an offer or if she changes her plans as well. And so that's part of the reason we felt it was appropriate. The B-2 is a very...is a district use in most of the suburban locations. You look at any new commercial development in Lincoln, it is in most always within the B-2 area within a use permit. That's why we felt this was a very reasonable district to choose for this particular location.

Ms. Seng: So we need to put something on Pending (inaudible).

Mr. Henrichsen: The only two that would be necessary is 3196 & 3247, Items 4 & 6. The other two do not affect that particular part of it. And no one has spoken in opposition to either of the other two.

Mr. Cook: Two questions. One, the benefits to the owner of this property under B-2 it seems to me would be that we have a considerably more leeway in adjusting setbacks & so on than we do under B-1. B-1 they don't come before us but they also are stuck with more rigid guidelines as to setbacks?

Mr. Henrichsen: That is correct. Under the B-1, the City Council does not have the ability to adjust setbacks.

Mr. Cook: So, potentially, they could come out ahead. It's just that they do have to go through a use permit process which it sounds like is the real sticking point here. The other issue is the land that's being requested for zoning to "P", we have a portion that will become public use?

Mr. Henrichsen: Yes.

Mr. Cook: What happens at a time that the property owners in this case, what the State of Nebraska...who owns the "P" property that we're...

Mr. Henrichsen: There's two different areas of "P" zoning. One is the area around the Homestead Expressway & W. Van Dorn. And in discussing that with the Dept. of Roads who was in favor of this application, they felt that most of that they would just keep for the right-of-way. There

may be a small portion, maybe 10 yrs. down the road that they might sell. At that point, whoever would purchase the property would then have to come back before the City Council to have it rezoned to an appropriate district. And that's where we felt really that that would be the best time to address what is the most appropriate use there versus today where most of that land is zoned I-1 Industrial with very limited setbacks & a wide variety of uses.

Mr. Cook: So, the State of Nebraska, if they were to fail to inform us or for some reason it slips through the cracks & they were to sell property to a private buyer & it was zoned "P", "P" doesn't actually have restrictions does it? It's just sort of a designation to let us know...

Mr. Henrichsen: It has one very important restriction, the only persons who can use it are a governmental agency.

Mr. Cook: So, there's no loop hole there. It's locked up unless they come in.

Mr. Henrichsen: It does not have setbacks & those type of things. There are limitations in uses but it does limit you that you must be a governmental agency to use it.

Mr. Cook: Okay. Although, when you say that, if they were to buy the land as a private owner, they could have a governmental entity come in & build a building on it. It would be apparently....

Mr. Henrichsen: It does not apply to land leased to government entities.

Mr. Cook: Okay. Um, & just in the general thing here, we're trying to take care of this now & I appreciate that. I know that in past years we've maybe not been...we've not taken the action we should've to prevent this occurrence from happening. I mean it's absurd for the State of Nebraska to have B-1 zoned land & sell it to a private owner & then we lose the control we might've had in deciding what is actually appropriate zoning. And, so, I appreciate the fact that now the Planning Dept. has an opportunity to follow up on that when in the past I know that they were not perhaps given the opportunity to do what was in the best interest of the citizens so, thank you.

Mr. Fortenberry: I have another quick question. Steve, there's been a suggestion that the B-1...if this was put on Pending & the B-1 left in place, a...I guess a showing of the developments intent, stopping short of calling it a use permit, would come forward. What would be the mechanism for doing that?

Mr. Henrichsen: Really the only binding mechanism is if a request came in to expand the commercial zoning for it to be accompanied by a use permit.

Mr. Fortenberry: That's what's being suggested?

Mr. Henrichsen: I believe that's what's being suggested & if that is the case, that would mean that the rest of the property would have to be a B-2 Dist. That's why we feel it's appropriate this 1.4, 1.5 acres be zoned B-2 because it is our opinion that if this area is to expand in the future & we're not coming to that particular part of it, that it would only be appropriate for it to expand under B-2 zoning.

This matter was taken under advisement.

CHANGE OF ZONE 3242 - APP. OF JACQUELINE BERNIKLAU TO AMEND SECS. 27.07.020 & 27.07.080 OF THE LMC (LMC) TO ALLOW PRIVATE SCHOOLS WITH CURRICULA EQUIVALENT TO PUBLIC SCHOOLS, AS A PERMITTED USE IN THE AG AGRICULTURAL DIST. - Jackie Berniklau, 6400 Eastshore Dr.: I'm making the application of property which address is 11401 S. 70th or approx. the northwest corner of 70th & Saltillo. I'm asking that the language be amended. When public elementary or high schools are mentioned to include "or private schools having curriculum equivalent to public elementary or public high school" to promote consistency. Private schools operated by private individuals, churches, or other agencies which have an equivalent curriculum to a public school have similar responsibilities & guidelines to follow. As an administrator of a private school, I develop programs which comply with regulations of the Nebraska Dept. of Education. The majority of students attending this school are contracted by surrounding school districts. Other students are referred by Lancaster County or approved for treatment

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programs. These students also receive academic instruction to receive credit & continue progress through school. The text change would allow our school to be relocated at the site at 70th & Saltillo. Although we have no immediate plans to relocate, our current space is leased. Questions?

Ms. Seng: We may have later.

Lorene Behrends, 12200 S. 82nd St.: I have concerns about the parcel of land at 70th & Saltillo Road. First of all, the building was constructed for the use of a private school without the proper building permits & zoning designation when construction began. The building lacks fire codes, school safety codes, & no plumbing facilities. Students mostly are court-ordered students. I feel that this small parcel of land which is zoned Agricultural is not appropriate for that type of student. There's very little space here for them to expand. I feel a school of this type needs to be where students have access to work release programs & that is not the case in this particular parcel of land. It appears to us, as neighbors, that this is a business adventure for the purpose of making large sums of money for personal gains. The Berniklau Education Solutions Team School is only an "approved", it is not an accredited school. They only offer 1 hour & 30 minutes of academics according to their brochure. This does not allow students to be phased into many public schools. I am strongly opposed to a school for this type of student in an agricultural residential area with such limited amount of space.

Judy Dlouhy, 12500 S. 82nd St.: The reason for my being here today is to oppose the Berniklau Education Solutions Team from establishing an alternative school on the parcel of land located at 70th & Saltillo Rds. Like the other residents in this area, my husband & I have many concerns. The first concern I have is that the area residents have not been made aware of Jackie Berniklau's request to place a school on this parcel of land zoned AG residential even though it does not meet the lot requirements. I spent this past Saturday visiting with many residents in the area & discovered that they were never notified of the Feb. 21 open house that was offered to myself & five other neighbors which all reside on 82nd St. south of Saltillo Rd. I find it interesting that Ms. Berniklau placed the Open House notices in our mail boxes without going through the U.S. Postal Service but chose not to notify the residents that are located immediately north of the proposed school's location. A second concern I have is that classes have been being held at this site without the proper permits or safety features in place. This small parcel of land is not suitable for a full school site that will need space for additional academic & administrative buildings, parking areas for high school age youth as well as areas for outdoor activities. The last concern I will address today is the fact that Lincoln Public Schools do not use this program. They currently have a program in house that they use. Tax dollars from the State Health & Human Services Dept. pay huge sums for vans to transport students from counties many miles away to this program that offers under 2 hrs. of academic study per day as per the best brochure. Would it not make more sense to locate such programs within the

counties that actually utilize this program. My husband, Russ, & I are asking that you deny Ms. Berniklau's request until further investigation & necessary notification of all residents can be completed.

Ray Tenopir, 6900 Saltillo Rd.: And I'm pretty much against this because I live just west of it. And all I have to say is, Mr. Camp I guess is our Councilman for that area, right?

Mr. Camp: Yes.

Mr. Tenopir: So, if you approve this application, I would like to file an application on my 6.5 acres to build another house there so I can move my daughter & her handicapped son out there so I can help take care of them. Thank you.

Joan Hergenrader, 7100 Saltillo Rd.: I'm not quite as prepared as everybody else but I want to express my concerns. I have a young family just right across the highway from this development. And just a few things we're just upset about is how...the way they went about it. We didn't know anything about it. There are no signs up for a rezoning area.



The way I understand it, there should be a sign out there & there is nothing. Her meeting that they did have I felt we asked them directly future plans for this site & they told us that no, we had no...any plans on to even build anything else out there other than what they have now. And some of the questions that were asked, they kind of went around about it & never did really answer them correctly. We just felt that the little meeting was just to maybe try & get us not to worry about what's going over there any more. It just seems like they're just trying to slide this in without everybody realizing what they're doing until after it's too late. Also, there is a natural spring that runs right through the middle of this small piece of land & I don't know the knowledge of what you can do with a natural spring but if they...you can't stop a spring from running so that may...if they would go in there & build they'd have to build up dirt to even put something over there. And if they did that, that spring would probably go over & flood Ray's land, that's just right next to him. There's also a pipeline that is directly shortly north of this area. The way I understand it, you really shouldn't be building a school even close to a pipe line. And I'm just expressing my concerns.

Jerry Shoecraft, Council Member: Could Staff come forward please? I've listened objectively to the concerns of the area residents. I'm trying to truly understand the opposition here today. And despite staff who recommended approval & Planning Commission gave it 8-0 approval, & I'm just sort of scratching my head here in figuring out why is there such opposition to this.

Mike Dekalb, Planning Dept.: I think the scenario you've got is where the individual has a specific parcel & some specific intentions of use of that particular parcel. And, at our recommendation, had talked to some of the neighbors so the neighbors know what the plans are for the site. But in talking to City Attorney's Office & with Staff, the best resolution to accommodate her plans was a generic language text amendment which allows private schools with a curriculum equivalent to a public school in the AG Dist. as we currently allow in all of the residential districts. So, the approach as far as the text amendment is generic. The neighbors, obviously, are responding to their concerns about the specific location.

Mr. Shoecraft: Is it the type of facility? Someone educate me 'cause I don't quite understand exactly what's...if this is potentially going to be a BEST facility, the acronym, & educate me 'cause I'm trying to figure out truly why that they opposition. Is it the type of activity or the type of people? What?

Ms. Berniklau: Please, in all respect, we called a neighborhood meeting &, in fact, I've left a message with Mrs. Behrends on her answering machine because I know the reputation that can surround new schools that supposedly are working with children that other schools don't want to & that is not the case with BEST. First of all, Lincoln Public Schools does contract with us for Level 3 Special Education. We do not take students that are in a suspended program or have to be bad, for instance, to be out of school. That's not the purpose. Some of our students that've kind of got lost in the system, in fact, aren't really in school in any particular semester but there is always an agency or a school district that refers the students. And I guess, you know, I've talked with a number of the neighbors too. And, in fact, the last one I ended up talking with said well, gee, if you ever, you know, if you ever want to teach them some things about livestock come over. I think we're getting some positive feedback also. I didn't happen to ask any of those people to come with me. But, you know, what I would say we have 28 students. We have 7 full-time staff besides myself. We have two therapists. We have a consulting psychiatrist. There was no intent to disillusion or to lead anyone. When I bought that piece of land, I had no idea of anything to do with it. Now I'm sitting at 26th & Saltillo, which, by the way, I did do extensive renovation to to bring it up to school code & I'm realizing that as time goes on in my lease, if something else should happen to that property, I really need kind of a backup so we can land some place. The building that exists there was not build according to school codes because that wasn't the intent. Now, with the work of the

architect & work through City Planning, hopefully we can have a site to do some vocational activities because that's truly what our kids can succeed in in many cases.

Mr. Shoecraft: Are these kids that are expelled from the public school system or went through some type of criminal justice system or...?

Ms. Berniklau: No. In fact, a Level 3 Special Education Program is a program designed to serve students who may not have those resources in their public school. Right now, we have students from Lincoln Public Schools, referred by Lincoln & paid for by Lincoln, students from Norris, referred by Norris, & some other surrounding communities. We work with another faction of the population through an intensive out-patient program. And that's typically treatment, individual, group therapy & family therapy. That is a program that's 3 hrs. long. We keep the kid 6 hrs. so they can get their academics also & they don't have to go back to school & lack that. We do have a contract with Lancaster County & yes, indeed, so some students are not at risk of having problems in the community or the community isn't at risk with them not being incarcerated, they are referred. We have very few slots...it's not the majority, it's for students & they're pretty much directed to tow the line & prove that they can exist in society through a structured program.

Annette McRoy, Council Member: You answered part of my original questions but can you give us a generic profile of the background of one of your students & then the second part of my question is if you do move your school out to your site, what concessions would you be willing to make for the neighbors because I'm thinking, & I don't want to stereotype any student whatsoever, but maybe if you can give me the generic profile without someone that we can recognize or jeopardize the confidentiality of your students but more their background & why they're with you as opposed to a different program. 'Cause I know we spent a lot of money working with students who are at risk & have other inner-City/County agencies that work with these students so it concerns me that we're contracting to a private school when I'm already giving money to somewhere else but that's not your problem but...so give me a profile of what students are here.

Ms. Berniklau: Typically, the disability isn't an extremely low IQ or low achievement score. Currently, I do have a couple of students like that who's intellectual functioning is in the probably 50 standard score range. It's not to say that public schools can't address the needs of these kids but if the frustration of that kind of functioning causes other students to be disrupted in their classroom then sometimes schools contract for that reason. Some of the students have labels of learning disability & although it's not ethical in Nebraska to label a student LD if they've been out of school because, in fact, that would give us spread in points between IQ & achievement. And I hate to say this but...&, yes, I am private but I've been working for State & public agencies for a long, long time & we just started this on our own 4 yrs. ago. The common culture is poverty of these students. And there are many parents that've struggled with their own private insurance or with their own private placement seeking out different psych hospitals & so forth like that to handle their own problems. But in the end, if there's, you know, a school within driving distance that can keep a child at home with their biological parents & still receive services that they need rather than being sent to another community or another state, then that seems to be something that we're all interested in doing. I also brought along...we just had our 3 yr. site visit from Approval & Accreditation. They did visit the facility on Saltillo that we hope eventually to bring around to the Codes to have vocational classes there & they're very pleased with that. Brochures that people may have got a hold of, I don't know, I don't know. We're approved & that means we have at least 1,080 hrs. in two semesters & the fact is we go year round so we have many more instructional units than that.

Mr. Cook: I have a question for Staff. Okay, I think we need to keep in mind that this is not an application for a specific school. This is a change to the zoning text which would allow this in AG & any kind of school in the future potentially.

Mr. Dekalb: As long as it meets that criteria, yes.

Mr. Cook: Right. And so, based on this, if we were to make this change, there wouldn't be a need for any kind of special permit right? This would be allowed by right if we make this change so we wouldn't see this applicant again. This is it?

Mr. Dekalb: That's right.

Mr. Cook: Do you know how many public schools are in the AG Dist.?

Mr. Dekalb: Certainly. We've got a number of public schools in the County & the City AG Dist. The school that's out, I think the school that's out by Yankee Hill is probably AG. Norris is an AG. You could a couple others, I guess.

Mr. Cook: But the issue with public schools is that even though we specifically note that public schools are allowed, it wouldn't matter if we didn't because we don't have any control over them, correct? They can go buy a piece of property & put a school on it because they are another governmental entity & we don't have the power to tell them they can't build a school. Is that correct?

Mr. Dekalb: That's correct. Let me expand on that a tad bit though. This language which exists in the R-1 through R-8 today, typically is used by the parochial schools, private schools equivalent to a public so Lincoln Lutheran, Lincoln Christian, I think when it first started was on AG zoning. So, that would be probably the most typical circumstance that this would happen.

Mr. Cook: But I guess I see AG as being a little different than those in that it's much less dense & that just as we don't allow any uses in AG that we feel would put an added burden on the road or perhaps create a problem as far as the septic system or something. It seems to me that a public school fits...or a private school would fit in with that type of category. It wouldn't really have a burden a whole lot different from say an office building or something like that. I mean we can't prohibit public schools from doing it but perhaps we have been prohibiting private schools for those reasons because, in fact, that kind of institution is less compatible with the surrounding.

Mr. Dekalb: Actually, the track record on this is a little more convoluted in the sense that the AG Dist. does allow most of the basic support infrastructure type uses whether they be fire stations, libraries, & so on are allowed by right in AG Dist. We had language for private schools allowed on parcels of land of under 20 acres by special permit. There was some discussion on the 20 acre language that there's some additional language added in 1980 that restricted uses allowed for undersized lots which is this particular circumstance. So, it needed to be resolved in some way & the applicant, in working with both Planning & the Law Dept., determined that this was not only compatible in the sense that it was the same as we have R-1 thru R-8 but resolved the issue of undersized lots as well.

Mr. Cook: How big is this lot that this applicant is...

Mr. Dekalb: Seven acres.

Ms. Seng: Anything else, Jonathan?

Mr. Cook: No, I guess that's all. Thank you.

Ms. Seng: Now, just stay there a minute because maybe Jon Camp, did you want to ask staff?

Mr. Camp: Well, I have several questions & perhaps, Ms. Berniklau, if you would come up too, are there currently classes going on in the facility?

Ms. Berniklau: No, there aren't currently classes going on in the facility.

Mr. Camp: Several of the neighbors who contacted me, if I understood them correctly, that there were.

Ms. Behrends: She told us that night that there were classes going on there.

Ms. Berniklau: We have done some kind of experiential things with

the students & I talked to County Planning before we started this venture. It's similar to work site kinds of things that would occur maybe one hour a day, a couple hours a week. We had, under the supervision of a couple voc. instructors, we had kids that actually helped clear some of the trees out, the property was pretty well run down when we arrived. We've had them watch & shadow some of the other work that's gone on around there but no, we're not having classes at the facility. And we won't until we're appropriately coded for that.

Mr. Camp: And under Codes & the school regulations, you'd have to then come up to the same standards as a regular public school?

Ms. Berniklau: Exactly. And, in fact, that was when we first started looking at this phrase "or private schools having a curriculum equivalent to public elementary or public high school" was a phrase that haunted me 3.5 yrs. ago because although I tried to convince everybody we're only a Level 3 because at that time, we hadn't gone through approval & accreditation & we're only serving a very small, very specialized portion of the student population. In fact, when I moved into the rental property I'm in right now, we brought everything up to school codes as mandated & outlined by the regulations. So, yeah, yeah, we would intend to do that.

Mr. Camp: And your facility is just a day only type class?

Ms. Berniklau: That's right.

Mr. Camp: There's no boarding arrangement?

Ms. Berniklau: No.

Mr. Camp: Have you had any difficulties at 26th & Saltillo?

Ms. Berniklau: Um, no, we haven't.

Mr. Camp: One of the other concerns that I've heard from several of the parties who inquired of me was that there may not have been adequate notice to them & I believe one of the individuals today talked about the zoning change signs & so forth. Perhaps you & Mike could enlighten us on that.

Mr. Dekalb: Zoning change signs are put up when we have a site specific request for an application for a change of zone or a special permit but on a general text amendment which applies to all the AG Dist. there's no signs placed.

Mr. Camp: What...I know there's this one invitation that we had in our packet. Could you explain how you had reached out to the neighbors & yet they were addressing concerns?

Ms. Berniklau: Sure. And I have to admit we did put the notices in the mailbox but you can ask Shirley at the Roca Post Office, I called her right away when I realized we did that & paid the postage for all 77 notices that we put out. And what we tried to do, I think, when County was advising us is it like a 3-mile radius, I think, or there's some recommended area & we tried to go a little beyond that & actually 77 letters were delivered as invitation to the neighborhood meeting & certainly, you know, I should've asked people to sign a register when they came in. I did not. There were certainly more than 5 people there. I think there were probably 15 or 20 neighbors that showed up to the meeting. Again, you know, I regret very much that there's opposition because I want everybody to be as enthused about serving kids as I am. But the fact is, right now I don't know if I plan to build anything more on that property. What I know is I can't have a vocational shop where I am now. I know the kids need vocation. I know that if I don't find another spot & my landlord decides to sell his property, I will need some place to go so I can't promise I wouldn't want to build on that either. The fact is, it will never be a large school. Part of the success is that it's very small & staffed very intensely. No, the State or anyone else isn't paying huge amounts of money. We get per pupil cost for some of the students & I don't think that should be an issue any way but that's kind of...I...at the meeting, I can't say no, I won't try to expand in 5 yrs., I promise that, you know, I can't say that. But there was no intent when I bought the land or even at the neighborhood meeting or any plans in the works right now for an additional building or filling in the pond or anything like that.

Mr. Camp: You currently have 28 students you said?

Ms. Berniklau: Uh, huh.

Mr. Camp: And so, if & when you move, you would be looking at a comparable number?

Ms. Berniklau: A comparable number. Our facility, right now, is actually coded for about 60 but we try to work with the types of personalities & what we think we can give the kids & what kind of teachers we have on hand. Again, you know, I would like for us to be judged like most schools in that you measure square footage & you figure out how many kids you need to serve but I'm certainly not looking at hundreds of students.

Mr. Cook: I have a question about this special permit issue. Okay, I don't have the AG code in front of me other than just what's come in to be changed & so explain to me what currently is allowed by special permit. If you have 20 acres, you can get a private school?

Mr. Dekalb: Yes.

Mr. Cook: By special permit?

Mr. Dekalb: Yes.

Mr. Cook: So, the only reason for this text change is to allow the use of a private that's smaller than 20 acres otherwise she'd just be requesting a special permit.

Mr. Dekalb: That's right.

Mr. Cook: But is that special permit language going to remain?

Mr. Dekalb: Yes.

Mr. Cook: So, why would you ever use the special permit language now that we're allowing it by right?

Mr. Dekalb: Well, you have a number of private schools. Let me get us back to Lincoln, for example. If you had dance schools, kick boxing schools, & a variety of private schools that don't meet the equivalent of a public school & they go through the special permit, that language would remain both in the AG Dist., as it is throughout the rest of the City of Lincoln & the residential districts.

Mr. Cook: And who determines if her school meets all the necessary requirements under this?

Mr. Dekalb: If there's a question, Building & Safety do an interpretation. If they have a question, they'll consult with Law Dept.

Mr. Cook: Okay. So, at this point, if we were to say that maybe we're concerned that 7 acres or anything smaller than 20 is maybe a bad idea, I don't know how much land public schools generally take up but if that's a concern here, the option is still available, it's just that more land would need to be purchased.

Mr. Dekalb: That's correct.

Mr. Cook: Okay, thanks.

Mr. Camp: Ms. Berniklau, I had a letter from one constituent in raising several concerns on his part & one of them was the number of vehicles, the commercialism of your facility. Could you describe the day-to-day activity? Are you having the students drive or are these individuals who perhaps are not driving themselves?

Ms. Berniklau: You know for a special education student that has contracted, part of the individual education plan or the IEP Plan is for the school & the parent & the service agency which we would be considered to get together & decide what's the best. Lincoln Public Schools does contract with us for some students to do transportation if it looks like it's more financially feasible for them than sending a big bus out our way. They also have written in to IEP's before the fact that the student will provide their own transportation. Currently we have a young man who will graduate with the Lincoln Public School diploma in the Spring who is driving himself. We have...the public school in Beatrice, in Mead & in Fairbury who provides transportation for their students, one or two students that they have driven in. We have four vans that we provide activity transportation for for field trips or visits to the rec. center.

Ms. Seng: Now, would you, once again, try to profile what your students are like because I don't think we have a very good picture.

Ms. Berniklau: Well, I think...

Ms. Seng: I'm really trying to figure out why there's so much opposition.

Ms. Berniklau: Me too. I think that word "court-ordered" is a bad word. And perhaps it was my willingness this fall to join with the County to look at some alternatives for kids rather than for them to be in a 24 hr. facility. And, you know, I hope I don't live to regret that. But, very typically, our students are from backgrounds of maybe single parents & they're all wonderful kids. They're all doing a very good job & I know this is televised. I'm just not real comfortable saying this. They are kids that need some special attention, some special needs in order to succeed & our point is that if we can move you back to Mead or Lincoln or Norris & you can be successful there, then we've done our job for that short semester, for that year that you needed a little extra attention & you needed some remediation in your school work & you needed to learn some behaviors that perhaps you hadn't had the opportunity to learn before. You know if we can support that with some therapy by licensed mental health practitioners & if we can, you know, the support the kid however we can &, in a few cases, it happens to be through graduation. Then what I think we end up with is, you know, more citizens that have their high school diploma & are ready to be successful & not survive by, you know, being in facilities or getting funding from City or State.

Ms. Seng: Are you the only one that's doing this?

Ms. Berniklau: No. I mean there are a number of facilities that do this.

Ms. Seng: Are any of them located in this kind of zoning?

Ms. Berniklau: Um, you know, I think I'm the only free-standing Level 3 School that there is. Most of those schools are attached to residential. I think that it's much harder work when you take the child from home every day but I think that's the ethical way to do it & I think it lasts longer in the long run. You know, I don't think you can take a child out of their community, put them in isolation for a year. Sure, their behaviors great but then you send them back. And, you know, the (inaudible) that the kids might backslide without the support. So, in that arena, I think we are probably the only free-standing Level 3 without the residential like (inaudible) in York or there's some in Omaha. Also, I guess there are agencies that do mental health support like we do but, typically, they don't add the public's...the approved curriculum part so the kids can't get credit while they're there. So, my philosophy is if you go into treatment & you're depressed & you get out & you have no school credits, you're even more depressed, you know, so it makes sense to combine that.

Ms. Seng: You have high staff to student ratio?

Ms. Berniklau: Right.

Ms. Seng: 'Cause if you had 28 & you had 7 staff...

Ms. Berniklau: Seven full-time staff, five of those which are teachers, most of them Masters level, myself, two contract therapists & a psychiatrist that supervises the mental health part.

Ms. Seng: The total is seven?

Ms. Berniklau: Uh-huh.

Mr. Fortenberry: Mike, why wasn't the issue of just a special permit pursued for this type of school?

Mr. Dekalb: The issue of the special permit was the point of original discussion but, again, because of some interpretation in the last year, the special permit cannot be requested on parcels under 20 acres in size. So, the Law Dept.'s feeling was that this was a more appropriate language text change versus a text change in the adjusting the 20 acre problem.

Mr. Fortenberry: So, any non-educational entity that's still a school, like a dance school, has to be above 20 acres & receive a special permit?

Mr. Dekalb: Yes.

Ms. McRoy: You said there's a building already on the property right now but doesn't meet codes so you'd have to probably expand that or bring it up to codes if you did find yourself in a situation where you're moving your school to the property in question?

Ms. Berniklau: Yeah. We still have about a year & a half left with out lease so I wasn't looking at anything immediate. There is a program

right now that we would like to have a building to serve kids vocationally. We do do some job coaching, some on-site kinds of things. We're looking at providing some independent living skills kinds of programs. So, with the hopes that maybe we would get this in mind, we tried to build the building as close to codes as possible without spending a lot of money before we knew if this would be okay or not. So, the plan now would be to have the architects submit everything we need & to use the building only after that's all completed.

Ms. McRoy: So, visually, how far from your building to the neighbors, the next property line, what would they see if I was on the next acreage? What I would see looking over onto your property? If I own the property next to your 7 acres & you had a school there, what would I see?

Ms. Berniklau: Right now? Um...

Ms. McRoy: There's nothing out there?

Ms. Berniklau: There's a building. There is an existing metal building that was on the property when I bought it & there's a basement house that is being used like for storage that was on the property when we bought it.

Ms. Seng: Paul, would you explain that only the...they want to know why they can't testify some more.

Clerk: Oh, yes, those in opposition have testified so...& the applicant did do her rebuttal & so forth so right now it's just questions from Council to Staff or to the applicant.

Ms. Seng: Okay, you want to call for #9?

Clerk: Okay, if nothing further on that, we'll go to Item #9.

Mr. Camp: Coleen, if I may, I'm sorry, Paul, we do have several residents that were here & I know they've taken time & would it be appropriate & I'd be interested in knowing what your response is to a couple of comments made. I know there were concerns that you expressed to me on notice & so forth & I just want to make sure there's communication here. If you wouldn't mind, Madame Chair, I'd appreciate that.

Ms. Seng: Well, the public hearing was really closed but I...

Mr. Camp: I know.

Ms. Seng: I guess you need to ask the rest of the Council what they want to do. You want to hold the public hearing?

Mr. Fortenberry: That was the issue?

Ms. Seng: Yes.

Mr. Camp: Yes, to reopen it so that...

Mr. Shoecraft: Being very respectful to the neighbors, be careful what you're doing as far as the precedent you're going to set, you know, I mean I'm listening & I heard & you can call me & I'll think about what I heard today but be careful what you're doing in regards to this issue versus other issues that may come up where the next neighbors don't get a chance to rebuttal after the applicant did or the developer. So, I'm not against you talking, I'm just telling us to be careful. So, if you want to do it, do it.

Mr. Camp: I guess I would like to just a quick one or two minute...

Ms. Seng: Why don't you move to...

Mr. Camp: I'd move we reopen public hearing on this matter.

Mr. Fortenberry: Right now?

Ms. Seng: I assume that's what he wants.

Mr. Fortenberry: Just for right now, yes, second.

Motion carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng; NAYS: Shoecraft.

Ms. Seng: I would like to say we have really opened ourselves up for every single issue this might happen then. So, the motion is & we have voted on it so if there is any more opposition to be stated. And I believe this should...let's start with if there are people that have not spoken previously. And I want you to know this is extremely exceptional. We have never done this in 13 yrs. that I've been here.

Russ Dlouhy, 12500 S. 82nd St.: Well, I speak for the neighbors, we thank you. And I think one of the big issues is if there's 35 students or 28 students & roughly 7 faculty members, what is going to happen if they get a permit & they've gotta do something with the sewage so the sanitation is...I'm a homebuilder, I know...I build acreages also, to dispose,

you've gotta have a percolation test done by the Health Dept. & for a four-bedroom house, for instance, it takes quite a long number of laterals so if they've got roughly 35 people, I don't believe, especially with an underground spring, you cannot be within 'x' amount of feet of this if you do a lagoon or a septic system. And that's a very important issue. I just don't think it was covered.

Dave Hergenrader, 7100 Saltillo Rd.: I live right across the road at 70th & Saltillo. I don't think it's been brought to the issue of how much land is actually usable on that property. She has two buildings already, a basement house, a pond. So, if she's got 7 acres now, altogether, she's only got maybe 4 acres usable. We had to have a septic system put in, it's been about a year, year & a half ago. The guy came out from the...I think his name is Jerry, from Planning Commission or whatever, he says I will not approve a septic system here at all, it has to be a lagoon 'cause of the way the ground is. We're less than a hundred yards from their property, where that lagoon is so if you're going to do just like he said, you're going to have to do a septic system, it's gotta be a very large one or a very large lagoon. You know we have small kids there, what happens when they widen 70th. I mean it's already to Pine Lake Rd. now. We know it's going to keep coming south. So, what are they going to do? You're going to take land off both sides more or less. I mean to be usable. Lincoln Public Schools cannot use Speedway Motors building down there because it's been gasoline & all that. There's a pipe line directly a hundred yards from our property line. So, it's about the same to them. How are you going to approve that? I mean if you can't have one school next to chemicals & gasoline & all, how can you approve another one to be there constantly? This is only for 10 yrs. for Lincoln Public School. They're talking maybe a lifetime. So, I appreciate you very much.

Ms. Johnson: Just a second, I have a question, Coleen. [Break in tape.] Now, if this were a dog kennel that was coming up there, would you be in just as much opposition?

Mr. Hergenrader: I think the reason why...I think I can say for everybody, at this meeting on Feb. 21st we went to, everybody asked questions like you did about & she kind of beat the bush all the way around of how it is. She always said, she'd never, ever build nothing more than just that little three stall garage whatever you want to call it for that, that would be it. And everybody said are you, you know, yes, this is all. Now, she's changing her mind. Now, she's wanting to do even more. You know I guess what we're concerned about is, you know, where's it all going...where's it going to end at for her? So, it's like, you know, you got all the other stuff that's over there already. I mean I feel sorry for Ray. I mean he's...we're up higher so the water's not going to come toward us unless you pump it there. But you start building & doing all that well, the water's going to go towards him, I mean, & I don't think he should suffer. I don't think everybody around there should suffer. I know if she builds up close enough & they do four-lane that out there, where's the land coming from? Off of us only? Well, that's real fair too. So, I guess that's what the whole opposition is. I mean she's never really stated any direct facts to anybody. And it's always been kind of beat around the bush a little bit & worded differently & here you go. We're suppose to live with it.

Ms. Seng: Mike Dekalb, will you please come & talk. We are not locating a site today?

Mr. Dekalb: No, the language in front of you is to permit private schools with a curriculum equivalent to a public high school or elementary school.

Ms. Seng: Before a school would be built there? Approved building...all of these questions would have to be answered, correct?

Mr. Dekalb: That's correct. They're fully coded. There were... City Building & Safety would issue all building permits. Building permits would be issued to the particular type. There is no water & sewer there relative to a public system so City-County Health would have to approve the waste system &, obviously, if it couldn't be approved then it wouldn't



happen.

Ms. Seng: The same people that said no to Lincoln Public Schools will be the same people that will be checking this out, it's the City-County Health Dept.

Mr. Hergenrader: Okay.

Mr. Cook: Just want to clarify something, I said it earlier but I just want to say it again because someone mentioned about decided to give this applicant a permit. No permit will be necessary if we approve this. It will be able to be done by right. They will need to get various permits for building & so on but they will need no special permit. They will not need to come before this body again.

Mr. Dekalb: That's correct.

Mr. Cook: Okay, the other thing was in response to Councilman Johnson's issue regarding a kennel. Let me see if I'm right about this. If a lot is 10 acres or more, then a dog breeding establishment & kennel, things like that are allowed but if it is less than 10 acres, there's just 4 uses listed. Agriculture. Public use, which would be public schools & various other public uses, fire stations, golf course, playgrounds, we're adding private school to that list. Item 3, single-family dwellings. Four, churches. So, dog kennels would not be allowed if this property is just 7 acres, is that correct?

Mr. Dekalb: That's correct.

Ms. Johnson: Jonathan, I think the point that I'm trying to make is that there are other issues here that are probably less appealing if I were a neighbor. And what I'm trying to say is I'm confused with are we doing a use permit or are we just changing language here & that's where I'm a little confused because it seems like we're voting on a building that's going to be built there when that's not what's before us. What we have before us is a language change of just a private school versus something else. And that's what I was trying to clarify because I was getting a little confused with the neighbors that there are other things that can come there that they may not like whether it's a less acreage or not. But what you just proved is that there are other exceptions that whoever is in this permitted use is going to have to abide by whether it's her or whether it's somebody that's going to build a stable or a dog kennel or a public golf course.

Mr. Cook: Except that ...

Ms. Johnson: So, there's other things that's going to have to be made that I think could address some of their concerns if that's indeed the case.

Mr. Cook: The big change we're making is just allowing this use on a smaller lot essentially because to get a special permit on 20 acres or more there are various uses that are listed for lot sizes of 10 acres or more I guess but they're not listed for 10 acres or less. And I guess the assumption is that they are the types of uses that perhaps are better if they're a little more isolated from the neighbors & I guess that's kind of the question here. Is this the sort of use that fits in with that list? That is is it more appropriate that a private school be on 20 acres or more in order to fit into this area more appropriately. One can say yes, public schools are allowed on 10 acres or less, public schools, we have no control over anyway so it's kind of tossed in there but it's really not something that we deal with in any case. Public schools have a separate governing board & they have to be dealt with in a very different way.

Mr. Tenopir: Can I say something? The water draining off of their property...

Ms. Seng: No, you've already spoken, I believe. Now, is there anyone else that did not have an opportunity to speak in opposition? Okay. Jon Camp, does this satisfy?

Mr. Camp: Um, thank you. I'll talk to them later. Thank you.

This matter was taken under advisement.

CHANGE OF ZONE 3243 - APP. OF NEBRASKA NEON SIGN TO AMEND SEC. 27.69.044 OF THE LMC TO ADJUST THE LANGUAGE WITH REGARDS TO SIGNS IN THE 0-3 DIST. TO ALLOW ON-PREMISES WALL SIGNS & ON-PREMISES PROJECTING SIGNS NOT TO EXCEED 10% COVERAGE PER FACADE OR A TOTAL OF 250 SQ. FT. WHICHEVER IS LESSER; TO

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ALLOW GROUND SIGNS PER VEHICULAR ENTRANCE INTO THE OFFICE PARK TO BE LOCATED IN THE REQUIRED FRONT YARD & TO ALLOW SAID GROUND SIGN TO ALSO IDENTIFY THE NAME OF THE TENANTS; TO ALLOW A 15 SQ. FT. GROUND SIGN AT EACH BUILDING ENTRANCE; & TO ALLOW THE CITY COUNCIL TO MODIFY THE GROUND SIGN & THE INTERNAL DIRECTIONAL SIGN REGULATIONS IN CONNECTION WITH THE GRANTING OF A USE PERMIT - Bob Norris, Nebraska Neon Sign Co.: We initiated the request for text change. Basically, the reason was that under the old ordinance, arbitrary numbers were established for number of signs on each facility with no relationship to usage or numbers of tenants in the buildings. The new language allows more flexibility. It allows general building identification as well as tenant identification if desired. The numbers of signs are taken away & we limit square footage the way we do in the other zones by a percentage of wall surface or so many sq. ft. whichever's less. We have split the O-3 away from the O-1 & O-2 & are dealing only with O-3. We've gone through a fairly lengthy process in recognizing the need for this change over a period of many, many months basically at the request of many clients & potential clients working with staff & achieving a situation that we're all in agreement with. We think this is a very good solution to an existing problem. The only thing I would say, in the description on your agenda, it indicates that one of the other changes would allow ground signs in the front yard. They are currently allowed in the front yard. The change that we're making on free standing signs is that they do not necessarily have to be adjacent to a drive. If sitting near the corner where you have two streets makes more sense, this would allow that even if the drives are down a side street or further down the property. If there are any questions, I'd be happy to answer them.

Mark Bronder, President of Hampton Enterprises, 1660 S. 70th St.: Appearing today in support of the proposed change to the O-3 signage. The primary area where this affects us in our business & the day-to-day course is in a multi-tenant building. If you take 20,000 sq. ft. building, if you have 5-6 tenants in that building, they all want their name out there. We think that they deserve to have their name out there so that people can find them. We also think that it can be done in a tactful way so that it's not obtrusive signage. So, again, in support today & be happy to answer any questions that you may have.

Sandra Miller, Administrator of Lincoln Endoscopy Center & Gastroenterology Specialities at 4545 "R" St.: A year & a half ago, we moved into this facility. To give you some sense of the size of our building, it's 25,000 sq. ft. We are a surgery center. We treat many elderly people & one of the requirements of Medicare is that they can easily identify our building. We would ask for a signage probably on this side of the wall. Presently, we'd be able to put up 6" letters which you would not be able to read unless you were very close to the building. This picture identifies the street number which is on the front of the building. That's 10.5". As you can see, it's very hard to read. We've postponed putting up signage on the building hoping that some legislation would change this. So, we are in favor of changing according to the proposal.

Mr. Cook: I have some questions for staff. Could you explain why the existing O-3 is so restrictive & why you feel this is a reasonable change?

Mr. Dekalb: The "O" Districts, as they currently exist, were developed in 1979. O-1 is the very limited district between the Capitol & the City Council Building, very unique characteristics. O-2 is a transitional lot/signage package where it's up to three lots off residential next to commercial. Again, a very unique circumstance. O-3 in '79, the only O-3 that existed was Mr. Hampton's property at 70th & "A" which is very internally oriented & internal loop circulation system & the signage package was developed to match that type of office complex 'cause it was expected that that would occur. What's happened over the years is that free-standing, suburban office parks have developed around the City. I think there's been a fairly long standing recognition that the signing that was developed for Mr. Hampton's didn't match what people were doing. So, this attempt would be to split the O-3 away, leave the O-1 & O-2 as

they are because they're very unique circumstances & then treat the O-3 much like we do a B-2 & B-5. It is a use permit district. It'd have a cap on percentage & on total square footage, whichever's less. I have some provisions for Council to make adjustments &, quite frankly, it'll still work quite reasonably, staff believes, relative to a transition. Commercial Districts, the B-2 & B-5 is up 30% coverage in 500 sq. ft. This is 10% coverage in 250 sq. ft. So, it'll still be a step up between a residential & commercial it may be buffering. We think it works well.

Mr. Cook: Okay. And the item added at Mr. Hunzeker's request that the City Council, well, okay, it was modified per his request. City Council can now modify any of these sign sizes in connection with the granting of a use permit. So, we could actually say that we want these signs to be smaller at the time we grant a use permit if we feel that perhaps some particular signage would be inappropriate for, you know, very nearby neighbors or something.

Mr. Dekalb: I think you could. Typically, it would be a circumstance where due to the train layout (inaudible) or whatever that you'd adjust where a sign could be located.

Mr. Cook: Okay. Now, just as a practical (inaudible), I know Union Bank is interested in this. The building out at...near Pine Lake Rd., is that the Union Bank that's interested in the change?

Mr. Dekalb: 40th & Pine Lake?

Mr. Cook: Yeah, er, no, 27th. There's a Union Bank there & it has a sign on it. Mark Hunzeker appeared on behalf of Union Bank. Is that the Union Bank that they're interested in changing the sign on?

Mr. Dekalb: I can't respond to that. I don't know.

Mr. Cook: He's not here today. Okay, well, I guess that I would just say that I think it's attractive as it is & I suppose that this sign could be considerably larger than what they have there today. I think it's attractively subdued. And as for the building at 4545 "R", I think it's exceptionally attractive as it is today & I'm sure that any sign that's put on will be attractive as well but, generally, larger signs...they do not always add something that will be at least aesthetically beneficial but I guess our issue here is whether or not this would be harmful in...whether this would have a harmful effect in our ability to use this district as a transitional district. I guess that's really the primary issue here. Even if it's maybe less attractive in our eyes. So, thank you.

Mr. Fortenberry: Why was 250 sq. ft. chosen, Mike?

Mr. Dekalb: That came from the applicant. I guess I'd have them respond to it in that sense but from review of staff where it's half the size of a typical commercial district appeared to be an appropriate transition. Most of the commercial districts are 500 sq. ft.

Mr. Fortenberry: Looking at that back wall, up to about the clock, & that's 250 sq. ft., that's a big sign in a neighborhood.

Mr. Dekalb: But then when you sit it back on the no more than 10% coverage of the buildings so it's kept in scale, plus with the setbacks, it should work reasonably well.

Mr. Fortenberry: Do you have an example of what this could look like, the maximum size sign?

Mr. Norris: I can't tell you a 250 sq. ft. signs going (inaudible) but to compare it to that back wall is not a fair comparison because you're sitting right here & that wall is what 12' high & it's not, you know, a setback of 100' or 50' or whatever to the building & it's not two stories up or whatever. You just can't compare that way. If you want, some day or at some time we can maybe come up with some examples. The 10% or 250 generally in the size of buildings that we looked at, the 10% would kick in before the 250. If you had a typical one-story building, a hundred feet across, you wouldn't get the 250 sq. ft.

Mr. Dekalb: Get 120 or something.

Mr. Norris: So, if you had a two-story building, 100' across which is a third of a block, you may get to 250. And the reason I react a little adversely to the question is that many times, these numbers sound big. In scale, in the environment, downtown we could check existing sign

permits & come up with a number of 250 sq. ft. signs, 2 or 3 stores in the air & they do not look very large. I guess everything's, you know, in relationship to your own feelings but in defense of signs which I hate to even come up & ask typically because we usually get beat up on pretty good, we are an economy today we're driving in our cars. If we were on foot, if we were back on our horseback, then the old shingles hanging out would be just fine. People are moving 30, 25 to 45 miles an hour around town. Different setbacks, different viewing distances, different angles. People don't come spend their money with us because it's extra to put these signs up. Signs are expensive. A well done sign takes a lot of thought as far as size, placement. And they do cost money so there is a market for them. People do it so that they can be in business so it is one of the most economical if not the most economical form of advertising & making the (inaudible) public aware or the using public aware of your business, who you are & where you are. That's my sign pitch for today. And I really...I'm hesitant to give you an example of this as a 250 sq. ft. sign because I would probably be fabricating something.

Mr. Cook: I just want to note though 250 sq. ft. is about the size of the 12 by 24 billboards in their new incarnation which is a little smaller than that. They're a little bigger than 250 sq. ft. I believe.

Mr. Norris: We don't do billboards so I don't know.

Mr. Cook: I understand & I appreciate that but...

Mr. Norris: Ten by twenty-five is obviously...

Mr. Cook: Yeah, & that that's something that does drive around town...

Mr. Norris: The typical...when you say billboard though, it don't...those are typically put up in tandem. They are currently, I believe, about 300 sq. ft. So, there are a lot of things wrong with throwing that out & I object a lot to that.

Mr. Cook: Point taken.

Mr. Norris: Setbacks are different. It's not on a building. It's not on a big building. And that is the maximum allowed. In defense of the proposal, I would say that we started the whole thing because it is typically medically driven. Many of the medical partnerships/groups in town moved into buildings like the Hampton people developed in Williamsburg. Three or four people in a building or three or four different medical businesses in one building & they all wanted to be identified & some of them, as Ms. Miller's group, had very long names & it's a function of a readable letter height times the length of the name.

Mr. Fortenberry: I think it would be helpful to have a rendering if you could perhaps take that medical building that was shown & put the 250 sq. ft. sign on the side. To deal with these numbers in the abstract as we've gone through many times before, Mike, is pretty difficult.

Mr. Bronder: To give you a specific example of a building in Williamsburg, 6041 Village Drive. It's a medical office building located directly south of Hy-Vee's parking lot. Tenant mix, radiation, oncology, hematology. Long words, multi-syllables take up a lot of space. As developers, we're constantly being challenged on signage. And, generally, we oppose signage. But go look at that building. It does it in a very tactful way that's not offensive. And that's what we're asking for here.

Mr. Norris: That's a 25 sq. ft. Is that measuring each line or the whole thing?

Ms. Miller: The whole thing.

Mr. Norris: And that's on the building at 45th & "R".

Mr. Fortenberry: What are we look at?

Mr. Dekalb: What I believe he's describing to you is the two-story building & this is measured around the outside of that sign & he's saying it's 250 sq. ft.

Ms. Miller: No, twenty-five.

Mr. Dekalb: Twenty-five sq. ft.?

Ms. Miller: That's just the one window section, right here, is where they're showing the lettering. And it's very small.

Mr. Norris: Which portion of the building?

Ms. Miller: It'd be right here.

Mr. Norris: So, that's about 1/4th of the building?

Ms. Miller: Um, hm.

This matter was taken under advisement.

CHANGE OF ZONE 3244 - APP. OF HEP, INC. FOR A CHANGE FROM H-3 HWY. COMMERCIAL TO I-1 INDUSTRIAL ON PROPERTY GENERALLY LOCATED AT NW 27TH & INTERSTATE 80 - Brian Carstens, 5815 S. 58th St., Suite D, representing HEP, Inc.: Basically, this is a downzoning, believe it or not. Nasty word today. Currently the site is zoned H-3. There's a contractors yard out there today & then they are working on several other buildings that'll be contractor warehouse type uses. And the H-3 just isn't appropriate zoning district at the end of a runway which allows banks, fast food restaurants, that type of thing. And so that's the request in a nutshell. We did meet with the Airport Authority & the Director did support our application. So, here to answer any questions.

Ms. Seng: I couldn't believe it. We went all the way back to minutes from 1985 from a Planning Commission meeting.

Mr. Fortenberry: Good research.

Mr. Cook: I just want to ask in reading the minutes, I understand that there was certainly discussion about how this looked from the Interstate even back then. I guess I'm curious if there've been any discussions about the entryway standards & how that might apply here if it's really not going to make the impact of anything on this property is not going to be substantial.

Mr. Carstens: The buildings are all going to be low in height because of the approach zone. I think the highest building we can have is 33' & that's to the top of the peak. And then there is quite...well, there's some residential zoning between us & the Interstate as it curves around. I think all we'll see is rooftops like you currently see today. Basically the whole campus is kind of oriented in on itself. You'll see the backs of the buildings. You won't see any the warehouse or the outside storage areas, at least on our particular piece of this change of zone.

Ms. Seng: Any other questions?

Mr. Fortenberry: Yeah for Planning. Just to refresh my memory, the Highway Commercial Zone is actually...the industrial zone is actually more restrictive in terms of setbacks right?

Ray Hill, Planning Dept.: Uh, no.

Mr. Fortenberry: Did I get them backwards?

Mr. Hill: The I-1 Zoning Dist., if it hasn't been built upon before, has a 15' front-yard setback. And I'm not sure what the setback is for the H-3.

Mr. Fortenberry: It's the use permit issue then.

Mr. Hill: Brian says it's 30' so this would be less restrictive. In other words, you could build closer to a street in the I-1 than you can in the H-3.

Mr. Fortenberry: There's a permit issue right? You can do so by right in the Highway whereas in the Industrial...

Mr. Hill: I'm sorry, Jeff, I didn't follow you.

Mr. Fortenberry: You're going to have to bail me out 'cause I'm obviously not going well off of memory. What are the differences between the Highway Commercial & Industrial zones?

Mr. Hill: Well, the I-1 Dist. is one of those districts that allows everything in it then it restricts the uses that are allowed. In other words, basically it restricts residential type uses in that area. There are certain uses that are environmentally sensitive that you do have to get a special permit for. In the H-3, it's really a highway service district. It's more geared towards serving the public as they're driving down a highway. There are a lot of uses that can be used in both such as warehousing.

Mr. Fortenberry: But you do have permitting in the Industrial zone for certain types of uses that are required?

Mr. Hill: Right.

Don Linscott, 5101 Central Park Dr., Suite 100, applicant: Jonathan, to answer your question, we are planning to try to address the issue of how it will look along the Interstate. We're doing buildings

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that I think you would drive by & say those are the type of buildings you'd want to be located next to the Interstate. They'll be metal buildings with nice banding, nice colors. We've respected the height that'll be along the Interstate. So, when we're all complete, this will be, I think, a very well developed little Industrial area that will be pleasing to the eye & anybody coming into Lincoln will see this & not have to look at buildings that you would be opposed to. So, we are working very diligently in making sure that those will look good.

This matter was taken under advisement.

CHANGE OF ZONE 3245 - APP. OF MANETTE KIDNEY FOR A CHANGE FROM AG AGRICULTURAL TO O-2 SUBURBAN OFFICE ON PROPERTY GENERALLY LOCATED AT S. 84TH ST. & OLD CHENEY RD. - Charlie Humble, Erickson & Sederstrom Law, 301 S. 13th, Suite 400, representing applicant: This is a piece of property located to the northeast corner of 84th & Old Cheney Road. It's owned by a couple for the last 12 yrs. It's single-family use. And what basically has happened here is that the area is developing around them & causing them to really be in a situation where they can no longer maintain the single-family use. It's time for them to go some place else & to find some other property. But what happens to this piece of property is the key issue here. We're asking for a change of zone from AG to the O-2 because of the size of it to put up a small two-story office building/medical building, that type of thing, of which there has been interest proposed. With looking at that area, & you'll see right next door to them, to the east is a multi-family HiMark permit that has been granted for 240 units on Item 41 of your Agenda on Pending, trying to go to 300 units plus waiver of setbacks which would put this property even closer to my clients property. There is across the street, pending before the Planning Commission, a development requesting some commercial use. To the south of them is a designation of the Comp. Plan for a commercial use. The Urban Village is south & west of them. So, you can see what is occurring & what the pressures are. In addition, with the annexation, they're going to have to spend a considerable amount of money to go to sewers & City water system. And so, the really...you know, what do you do. And they looked at it from a standpoint of some other types of uses but it's just too small. Looked at it from a domiciliary use, early childhood care facility, that type of thing. Too small really for much meaningful multi-family development so they're either at the mercy of the folks that surround them or we can recognize now that this area is changing, that there oughta be a use other than residential for this particular piece of property. Now, the Staff & Commission have indicated that there are two basic hurdles & two concerns. One is that this will be a very major intersection. There's no doubt with the medians & the amount of traffic in relation to the shopping center development at 84th & Hwy. 2 & other development in between. Then we're going to have a major intersection here. With the medians, there is concern expressed that there would be some unsafe traffic movements. But for our size of development, we're only talking about fewer than 400 traffic movements in a day compared to thousands of traffic movements that will occur in this area. Secondly, they're saying well, wait for the subarea plan because we don't want anybody to do anything at all until we see the subarea plan at Hwy. 2. But, again, we're so insignificant that it really is not going to depend upon that subarea plan at all. Plus, we're right on the edge of the area. Only about an eighth of a mile from being outside of that mile & a half area. So, what we would say is that we're very small & insignificant, [timer sounded] & I got just a couple more minutes, & that when you look at the Comprehensive Plan, you're going to have to go to some kind of use other than single-family use & this certainly would be compatible with the area & allow a use of this particular small property. You're not going to set any legal precedent in terms of acting on our application & I think we can be distinguished from the standpoint of size & the pressure that is occurring & the development that's occurring around us that won't create problems for you in connection with looking at future applications within the subarea plan. I'm really representing kind of the David against the Goliath for a change. This really is a couple that are not developers. They have no interest in being bothered & they set there

for 12 yrs. & then the whole world has changed & turned upside down, I might add. Very quickly, I'll just show you how very insignificant this use would be. I'll hand you this but, basically, the use here is (inaudible) the subject property use & when you look at the other uses that'll go in at Hwy. 2, you can see that we're less than 1% in terms of traffic generation. When you get that down to a specialized & look at the actual uses that'll go in down there, we're something like one-half of one percent. I'll have Paul hand that. And then, very briefly, this is the area that I was referring to. Kind of hard to see but here is the subject property up here at 84th & Old Cheney. Just about made it out of the subarea plan, not quite, but just about made it out of there. So, with that, I would be happy to answer any questions.

Ms. Seng: Does anybody have any questions of Charlie? Yeah, I'd like to have Staff. Yeah, talk a little bit about...I understand what it says here. It says you denied it because it's not in the Comp. Plan. I mean you were following Comp. Plan.

Mr. Hill: Right.

Ms. Seng: So, what do they...you're suggesting that they just wait then until you get the larger plan finished?

Mr. Hill: No, that's what the Comp. Plan Subarea Plan for the 84th & Hwy. 2 project says that any change of zone within this mile & a half should wait until those studies have been completed. The City isn't completing those studies. Those studies are being, as I understand it, being completed by the developer of the shopping center at 84th & Hwy. 2.

Ms. Seng: And those aren't done yet?

Mr. Hill: To the best of my knowledge, they haven't been completed & turned into us.

Ms. Seng: Have they been started?

Mr. Hill: It's my understanding that they were to start those. I haven't been involved with what they've been doing but they indicated to us several weeks ago that they would start those studies because they have an interest in starting to move ahead with that project.

Mr. Fortenberry: Ray, somebody's gotta step forward & start giving some planning guidelines in this area. I mean there's two dilemma's. There's our dilemma & your dilemma about wanting to wait & not piecemeal like parcels like Charlie is presenting & yet there's his dilemma & he's saying I don't want to have to wait until a larger Comp. Plan Subarea Study is done that he isn't...that the City isn't even funding. So, this is a messy situation 'cause there's others who are coming forward & asking for the same thing so I think we need a timeline, at least, as to when that'll be finished so that these people can have notice when it's...& it may very well reasonably end up being 0-2 if it doesn't happen next week, so that they have notice as to when they can proceed to develop.

Mr. Hill: Okay. We're just pointing out in our Staff Reports what the Comp. Plan says. We understand that maybe some people don't want to wait but we're saying that the plan does...

Mr. Fortenberry: I realize you're bound by that. Don't...I'm just...

Mr. Hill: And so, I mean, if we were going to recommend a change of zone, I think forgetting the mile & a half study, I don't know if we'd be recommending approval to commercial at this intersection anyway. As pointed out in our Staff Report, the plan proposes twice as much commercial zoning as projected to be needed by the end of the planning period.

Mr. Fortenberry: Is that the basis of your objection or just one of them in addition to the lack of a subarea plan?

Mr. Hill: That's one of them. Plus the fact we already have zoned on the southeast corner of this intersection, or not zoned but shown in the Comp. Plan, that that would be the neighborhood center for this area. We also have a village plan shown about a half mile north of this on the west side of 84th St. So, based upon those factors, we don't think there's a need for additional commercial. We also have a great concern about the traffic movement that would be generated from this project. As Charlie pointed out, eventually this intersection of 84th & Hwy. 2 is going to be a very large intersection. You may have 6 lanes of traffic &

if you don't have the area to move from one lane to the other, you're going to have all sorts of problems with during rush hour of getting from one lane to the other. If you're coming out of that area & you want to go south, you've gotta cross two lanes of traffic to get over to the left-hand turn & in a very short period. So, this is one reason that we think it's too close to the intersection to have that access. We're talking about right-turns in & out of this particular project.

Mr. Fortenberry: What would be the way in which to expedite this subarea plan so that all these lingering questions out there about how various developments at Hwy. 2 & 84th are not...

Mr. Hill: I think it's a matter of...

Mr. Fortenberry: Projecting a lot of uncertainty into the market.

Mr. Hill: Yeah. I don't know how to answer that, Jeff. It's...the developer of the center, if you go back through the history of this, this study came about because of the concern of the people who lived in Pine Lake & they wanted to make sure that these studies were completed before that commercial zoning was granted. So, those studies are really geared for the development of 84th & Hwy. 2. They chose a mile & a half radius to study to complete these studies before any zoning was granted. We understand that this is clear out to the very edge of that radius. But it is part of the Comp. Plan & it was part of that subarea plan...[break in tape] the developer on this particular project.

Mr. Fortenberry: Well, there's a lot of dilemmas here both ways. And, you know, I've just...you're not the only one obviously interested in the question.

Mr. Humble: If I could, Jeff, maybe address some of your questions real quickly. We're talking here about approx. 15,000 sq. ft. of office space. If I, you know, if we had 150,000 sq. ft., I wouldn't even be here, you know, that's significant, look at the studies, etc. But this is so insignificant. And if you take to its illogical conclusion the fact that we've got enough "commercial space" then we're done in the whole City of Lincoln. And we know that isn't the case. There is going to be more commercial space that will occur &, in this particular setting, I think everybody admits this isn't a bad use for this. Now, you can say well back it up, go down the street, come in on HiMark & they say well, we could do that if you agree that you will limit the use of this to single-family. And that's not possible & it's not going to happen. So, we're doing the best we can & when you talk about 369 movements over the day that's totally insignificant. Peak hour, fifty. I mean it's...you're not even going to know it. So, it's not like you're going to have bumper cars out there & lots of crashes & that kind of thing. And that's why I say, this really does have an impact that's so different on these people, so different than the impact that one would have of a commercial developer who could wait. I mean that's part of the game. That's what you wait for. But these poor people here are up against it. And they don't have the deep pockets & everything to wait. They gotta go some place & try to do something with this land. So, I think those are the differences. And, again, you know to show we're at the mercy of everybody else, now we're at the mercy of someone else to do a plan someday. You know when, does it make sense? So, maybe on this one without...I don't think it's going to goof up the rest of the development or the rest of the area, let this one go through & let's look at the big boys as they come along.

Ms. McRoy: Mister Humble, on the sheet that you handed out to us, it was noted this is from the 5th Edition of the Trip Generator. And I noticed in our notes on page 5 of our notes from the Planning Commission, that that would be 541 average vehicle trips for an office building the size you're talking about using the latest model of trip generators. So, that's quite a bit difference from the 369 that you quote than the average of 541.

Mr. Humble: Okay, let me defer to Brian Carstens because Brian did this & that's his area of expertise. So, Brian.

Mr. Carstens: The manual we have is the 5th. I did not have a copy of the 6th but I couldn't find anything close to the rate that was quoted in that particular manual. I can't believe it'd have that large of a jump. I don't know if they were comparing square footages or...



Ms. McRoy: Average 15,000 medical/dental office building. So, I was just...it seemed to be a significant jump if you're talking lower 369 to 541. I just didn't...I wanted to know what the impact...

Mr. Carstens: That's probably about 25% more I'm guessing.

Ms. McRoy: So, that would be an impact I would have to consider 25% more than...

Mr. Carstens: If you wanted, we could relook at that, the newer manual, & see what the difference is for next week if you wanted?

Ms. McRoy: I just noticed there was a big difference & I wanted to be clear as I consider, you know, during my deliberations but that's kind of...I just wanted you to know that's a major impact or a difference, I guess.

Mr. Carstens: Okay.

Mr. Humble: But if...but even then, if you look at it from the standpoint of comparatively impacting, you're still...even adding that on, still under...you're less than 1% of the total. And then about three-quarters of 1% when you look at specific land use trip generation. So, while, you know, when you compare three something to five something, it seems big but in the whole context of things, it's still very, very small.

Mr. Carstens: I did want to point out while I'm here that the trip generation rates did not include any of the Industrial that's shown. There doesn't seem to be any number for square footages on that. So, the overall trips for that entire subarea is going to increase quite a bit more with the industrial area. And I just made some assumptions based on some things happening at SouthPointe Pavilions breaking down gas & convenience, fast food, banks, that type of thing too.

Ms. McRoy: I'm just thinking about in the future when we have the Subarea done, what you, you know, this was approved, what the, you know, the traffic analysis from those then down the road we'll try & track what we're going to have at that location. So, I was trying to add it all together & look at the big picture. (Inaudible)

Mr. Humble: Sure. But 541 vs. 67,577 so we're still hardly a blip on the radar screen.

This matter was taken under advisement.

**\*\* 3:41 p.m. - Break.**

**3:50 p.m. - Reconvened. \*\***

AMENDING SEC. 10.14.200, 10.14.210, & 10.14.220 OF THE LMC TO PERMIT U-TURNS AT SELECT LOCATIONS WHEN PERMITTED BY AN AUTHORIZED TRAFFIC CONTROL DEVICE - Rick Haden, Traffic Engineering: I don't really have any specific remarks other than to indicate that the purpose for this is to address number of locations that've come up in recent times that we're looking at permitting left-turns where they would be prohibited today. In general, we would remain restricted to intersections only for residential areas, not arterial streets. You could make U-turns as you can today at intersections but not at mid-block locations. On arterial streets, congested business districts or where we have a traffic signal in place, it would remain generally restrictive that you can't make U-turns except where there's a sign permitting it. And we do have a number of locations that've been built recently or that are on the drawing board right now where we have extra width either in the median or in the roadway so that a person could make a continuous U-turn in a continuous forward motion. In other words, they wouldn't have to back up & maneuver back & forth to make that U-turn. And in looking at those locations, we feel that a U-turn at that location would be safer than perhaps a left-turn from a side street at a different location or maybe a location where people are electing to make U-turns illegally today. So, it would be to accommodate it at a safe location. And one, in general, probably the first one we would implement is on N. 27th St., the first median break south of Superior Street. If you can picture between Superior & Dan Ave., there are some businesses in that area. We've recently prohibited left-turns at Dan Ave. because of the risk involved in trying to cross two-lanes of or two directions of travel there trying to find a break with the heavy volumes on N. 27th St. so we've recently prohibited left-turns there. So, a

person now going westbound on Dan Ave. is required to make a right-turn. If they go up a block north, there's a median break there where we have an extra wide roadway southbound. There's actually three-lanes southbound there so a person can make a U-turn at that location & proceed southbound on 27th St. And we feel that's a safer maneuver to cross, to merge basically with the northbound traffic, go a block into a left-turn lane & then pick a time & a gap in the southbound traffic & make a U-turn in the gaps in southbound rather than trying to do it all in one motion. And I think in the E. "O" discussion you probably recall there were some locations that've been discussed there & those are being looked at right now & it looks like there could be some possibilities on E. "O" as well. So, that's, in general, what we're looking at. But it would only be locations where we put the signs up & it would be very selective.

Ms. Seng: You understand on E. "O", no one's ever going to believe that this is going to happen. You know that. You've heard that.

Mr. Haden: Yes, we've...that's why we feel we need to put the sign up is to invite them because people won't people it. We are a growing City & we do have some streets now that are getting wide enough to where you can do that in a continuous motion. But it is very common across the country as you probably know on wider roadways.

Ms. Seng: We're glad to see it coming. Jonathan.

Mr. Cook: I just want to say that I've been discussing some changes to the text with Public Works & the Law Dept. because there are some cases where U-turns are, in fact, expected to be allowed on residential streets but technically aren't allowed by this ordinance & other places where this ordinance may not be clear that a certain turn is prohibited when, in fact, in actuality it ought to be. I think we just need to clarify the language. This ordinance looks like it's written in English but every person I've talked to has a different interpretation of exactly what it means. So, hopefully, we'll get that cleared up & maybe we'll have a substitute ordinance next week that fixes those.

Mr. Haden: Yeah, I believe one of the items that he mentioned were a median crossover & that's a location where, currently, on residential streets if you have a median that's 30' or wider, if you make a U-turn there it's really not considered a U-turn because it's two separate intersections. So, legally, you're actually making two left-turns. But there are some locations in residential areas where we have a median narrower than 30' & it's felt that we should look at those & see if it's in the middle of a block, for instance, is that something we can allow & I'm inclined to say yes but I want to look at some of those specific locations. And I think we could further modify this to allow that situation too. And as Jonathan mentions, in certain areas of town, it's pretty common to see people do that. So, we probably...if we don't have a problem with it, then we need to address that as well.

This matter was taken under advisement.

APPROVING A LEASE AGRMT. BETWEEN THE CITY & THE AMERICAN LEGION POST #3 FOR THE LEASE OF SHERMAN FIELD FROM APRIL 1, 2000 THRU DEC. 31, 2004 - Dick Clarence, Post #3 Athletic Director for Boys Athletics: We requested this. Actually, it's kind of an extension, rewritten extension for 5 yrs. so we can run our baseball program. And we also do the high school...some of the high school baseball programs at Sherman Field. Any questions?

Ms. Seng: That's what you've had before is 5 yrs.?

Mr. Clarence: Yeah. The last one was five. The one before that was ten.

Jim Morgan, Parks & Rec.: I would be remiss if I didn't comment on the wonderful volunteer help that Post #3 provides for the running of that program & the maintenance & upkeep of Sherman Field. If you haven't had a chance to study the contract that's before you, there's about 5 or 6 key points & I'll hit them really quickly. Under the contract, American Legion Post 3 does all the preparation for the games: mowing, marking the field, do all the cleanup of the grandstands & the restrooms after the games. So, the City Staff does not have to go there. They cover the utility bills for light & water. They arrange the schedule which saves us considerable staff time. The contract allows them to collect admission

fees under certain circumstances that are listed. The City controls concession at Sherman Field, however, & we separately bid that contract. And, of course, we are very aware of the alcohol prohibitions & I would not support alcohol at a youth facility anyway. And they also cover the City for insurance for activities during their programs. So, it is a wonderful relationship. It's a good partnership. It's one of the premier American Legion Baseball programs in the State. With the Keno money that's been provided over the last several years for the grandstand renovation & the lighting field, the new lights for the field we're very proud of it. We're also very proud of the program & the help that we get from Post 3 to bring teams into Lincoln.

This matter was taken under advisement.

ACCEPTING FUNDING SUPPORT FROM THE RAILROAD TRANSPORTATION SAFETY DIST. (RTSD) FOR THE ANTELOPE VALLEY STUDY - Roger Figard, Public Works: Just briefly, the RTSD regularly, over the last 5 yrs., has provided funding support to help with the Antelope Valley MIS Study. That money is in the budget. The Board has authorized that payment & your approval of this interlocal simply allows the City to accept that money from the district to help fund that study. I would be happy to answer any questions you might have.

This matter was taken under advisement.

WAVING THE PUBLIC STREET PAVING DESIGN STANDARDS FOR FRANKLIN ST. & WAIVING THE SIDEWALK REQUIREMENTS ALONG THE NORTH SIDE OF FRANKLIN ST. BETWEEN S. 51ST ST. & S. 52ND ST. IN THE MCMANAMAN'S ADD. ADMIN. FINAL PLAT - Dana Roper, City Attorney: Planning has pointed out that we have an error in the resolution that is before you. The number one, should be denied & number two, should be approved which is the opposite of the resolution that you have before you. We will bring forward a corrected resolution when you act on it next week or today if you'd prefer to. If you can give us a week to get the corrected version, we will do that. If you want to act today...

Mr. Camp: I move we delay a week on this matter.

Mr. Shoecraft: Second.

Motion carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

John Glynn, 3930 South St., Suite 101: I'm the attorney for the applicant & developer, Julie McManaman. I'd like to run through the history a little bit on this matter. She applied for a lot split back in 1997 which created this lot which is on the northeast corner of 51st & Franklin Streets. Franklin Street is presently unpaved & unsidewalked. In order to get the lot split, she had to post two bonds. One was for sidewalk & one was for paving. She came in with an application to the Council back in 1998 attempting to pave Franklin St. or at least get gap paving in front of Lot 2. This was denied. So, she's come back now & filed an application to waive the bond for the paving & waive the bond for the sidewalk. The Public Works Dept. recommended that both bonds be waived. Planning Staff recommended that the bond be waived for the paving but be required for the sidewalk. We are in agreement with that recommendation on the specific understanding that wherever it refers to lot owners, in that recommendation, we're talking only about the owners of Lot 2, not the entire block because we were unable to get 51% of them to sign up for a paving district, how were we going to get them to agree to this condition. So, I did discover that the one resolution that I received in my packet we seemed to be opposite of what it should be. I was out of town all last week & really didn't have a chance to review my packet until I got down here today or we would've probably had the ordinance or resolution straightened out before it was presented to you today. I'm here to answer any questions in regard to this matter.

Ms. Seng: So, what she really wants now is to get out from under this bond?

Mr. Glynn: Paving bond. The house has been constructed on the lot & I presume paving will be going in within the...or the sidewalk will be going in within the next several months but we are still willing to post a bond for...continue the bond for that sidewalk.

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Ms. Seng: I'm trying to remember, this was the one with half a street or something?

Mr. Glynn: Yes, that was the gap paving which was recommended to be unsafe.

This matter was taken under advisement.

APPEAL OF L. VINCE CORNELL FROM THE PLANNING COMMISSION DENIAL OF SPECIAL PERMIT 1818 FOR AUTHORITY TO PARK & DISPLAY VEHICLES FOR SALE IN THE FRONT YARD ON PROPERTY GENERALLY LOCATED AT 702 W. "O" ST. - Mike Rierden, 645 "M" St., Suite 200, representing applicant: Once you go through all the material & read everything, this matter really boils down to something which is fairly simple. The Council, back in 1997, approved a almost identical type of request for the Dodge dealership at Capitol Beach & W. "O". We're asking for basically the same thing. You look at two parts of the zoning ordinance. Under the parking regulations, you got to 27.67.030 & just reading briefly from that it says parking...&, by the way, this is an H-3 Zoning Dist., & it says parking in the front yard is permitted in the H-3 Zoning Dist. Then you go over to the special permit section & it states that the storage of vehicles for sale & resale in the H-3 Zoning Dist. may be permitted on any portion of the lot where parking is permitted. So, given the fact that parking is permitted, we should be able to...we feel we should be able to pursue a special permit in this particular instance as long as we comply with any landscaping or design criteria that would be set forth by the Planning Dept. which they have set out in their Staff Report to you. The next thing I'd like to show you is, first of all, I have three additional letters in support of this particular proposal. One is from Guy Dean, Guy Dean Auto Sales. The second one is from T.O. Haas Tire Company. And the third is from Ron Colin, Colin Electric Motor Service. And I'll give these to Paul & they're basically in support of what Mr. Cornell is attempting to ask of you. I'd like to put on the overhead projector, these are photographs. The top photograph when the Planning Commission denied this on a vote of 6-2, a recommended denial, my client went out & put vehicles in the front yard & that's depicted by this photograph here. Now, keep in mind that he can do that & he can do it legally today. What he was attempting to do is he set these up, & the second photograph also shows that, & wanted to take photographs of what actually could happen today. What he's attempting to do is to do it right & go by the zoning rules & regulations & so then after he did these particular photographs right after the Planning Commission Meeting, he then parked the vehicles in a fashion that he would do for display of automobiles. And you can see it's much more tasteful than simply parking them out there. There would also be landscaping along here just like you required in the Lincoln Dodge matter. The next item I'd like to show to you is, again, the support that he has of individuals out in the area. This is a map of the area. The applicant is right here. You can see all of the yellow. There are basically 24 businesses that are in support of this particular proposal &, to our knowledge, only one is opposed & you'll hear from them today & that's the Popeye Chicken Restaurant that is right next to the property in question here. I would then like to give to you, Mr. Cornell has gone out & talked to all of the businesses he can not only in this location but basically all up & down W. "O" St., W. "P" St. & E. "O" St. & E. "P" St. & what he's obtained is petitions. And I'll give you copies of these from various businesses in those particular locations. There are a total on what I'm giving to you of approx. 80 businesses. Not shown on there are two that just received...we received just recently & that's Lincoln Steel & Sunset Motors which are reflected on the drawing that's on the overhead projector. So, he has the overwhelming support of the businesses in this area. You're going to hear from the West "O" Business Assoc. They do many great things but I think in this particular instance, they've kind of lost sight of actually what we're trying to accomplish here. This is, again, Mr. Cornell can park in the front yard if he so desires & not need a special permit. What we're trying to do is to do it right & we ask that you approve the request & we'll go along with any sort of landscaping requirements that are set forth in the Staff Report. Finally, as just for

the record, I would like to submit these are the actual signed petitions of the businesses that I just gave to you & I'd like to submit these into the record. With that, I'd attempt to answer any questions you may have. Again, the matter is a simple one as far as I can see. It's a matter of parking in the front yard for display of vehicles. Again, he can put the vehicles there. I really think that we're...this is really not a justified interpretation of the zoning ordinance. I think Planning has taken the position that yeah, you can park in the front yard but you can't do it for display of vehicles. And I really don't see that in the zoning ordinance. So, that was the same predicament that Lincoln Dodge was in. And so, in 1997, they created this special permit process. So, I would ask the Council to be consistent & follow the situation that you did & that you voted upon in the Lincoln Dodge matter. There are other speakers who wish to speak to this so with that, I'd answer any questions you might have of me.

Ms. Seng: I don't think we do right now but we might later.

Glenn Durham, Pro Muffler Service, 650 W. "O" St.: We moved in back in 7/1/96 & it was a big eyesore. They had semi-tractor trailers pulling through our lots, tearing down our awnings, making big mud holes. It was a mess. I mean it was a mess. And what he's done there is just absolutely unreal. It slows down traffic through there 'cause we use to back out of our shop & almost hit cars that were just turning around & what he's done to slow it down is great. It's very great.

John Lust, J.D. Byrider, 840 W. "O" St.: That's just about two blocks to the west of the property in question. I mainly just want to echo what Glenn just said about what that property was like before Mr. Cornell came around. It was a piece of property that most people had to pass to get to my property & it was a real eyesore. Even though Mr. Cornell's a direct competitor of mine, I recognize the value of anybody coming in & taking some property like that, cleaning it up & developing it. It benefits not only that person but it benefits the West "O" business community in general. And, for that reason, I hope you'll grant this permit & reward that kind of thing rather than punish it.

Larry Spaulding, Spaulding Motors, 1158 Saunders Ave.: I have been thinking about expanding my business myself & I'm kind of watching what's happened with Vince here & through the Council to see if I want to do that. If I had laid out the kind of money that Vince does on this property & then find out well, it's almost going to be nonusable for his use by the time you move your cars back, that's scary. That's a scary thought to me, you know, putting my money in Lincoln's property. But I am for it all the way & I put my support to it.

Burt Pettigrew, Burt's Auto Sales, 2120 W. "O" St.: I've been in the used car business in Lincoln since 1967 & I've seen stipulations like this where people had to move their wares back. And in the used car business, it's different than the new cars. A new car, if you want a specific car, you'll go hunt it down. You'll find your Ford, or a Dodge, or a Chevy or whatever you want. Ours is a matter of driving down the street & you get a lot of, oh, you know, snap decisions as to where they saw this particular car or something like that. So, maybe five years ago, they wanted to own a certain Camaro or something. If they drive down the street & see it & it's up where they can see it, fine. If it's sitting 30' back from the lot line, they're not going to be able to see it. I've found through the years that the one's that I can sell are the one's that are up close being displayed where people can find them. I keep on hand about 60 to 80 cars, sell about 500 cars a year. I think that all of the politicians here even know the value of getting your wares up front because you all put your signs right up by the lot line. And I would ask that you please help Vince get this thing straightened out to his advantage.

Dale Napier, Dealers Auto Auction of Nebraska, 7500 N. 56th: I came to town 3 yrs. ago & watched the town develop through dealers. One of the things I've learned in the industry is image. Vince went out & developed something that is eye pleasing for a change. It's not a Quonset hut. He's offering a nice product & it needs to be displayed & the only way he can display it is the front line. That is the thing that lets the man

make a living & my concerns are with the laws & what happens to the dealers is a direct reflection on my income & my business. I only sell to dealers. I don't do anything with the public. And when a man goes out & tries to develop something & he gets his hands slapped, loses 40% of his property for the huge investment, it scares me because I am going to expand. I'm growing. It's a good business & the dealers do good business.

Peter Katt, Pierson Fitchett Law Firm, 530 S. 13th St., Suite B: Appearing with me is Mr. Ron Hutchison who's one of the owners of the Popeye's Chicken Facility. We'll try to economize our time but, together, we'll take less than 10 minutes. First, for orientation purposes, the map that was up, Popeye's Chicken facility is directly adjacent to the facility that has been constructed on W. "O" Street. I think one of the issues that has been raised by all of the auto sellers has been the matter of fundamental fairness as to whether or not taking 40% of his display area is fair. This is sideways but what this drawing shows is the area of the lot that is available for display of motor vehicles on the site. And this particular drawing accompanied Mr. Cornell's application at the time he constructed the building on the site. There is no doubt that at the time Mr. Cornell constructed his building at this location, that he knew what the zoning limitations implied for this site as to where he was able to display cars. And so, that fact should not be taken...it wasn't ignorance, it was nothing else. It was a matter of a conscious business decision that he chose to take this site & construct his building knowing that there were limitations & not absolute rights for display. The comparison to the Dodge Dealer at W. "O" & Capitol Beach Blvd. is completely unfair. If you're familiar with that site, there are no existing businesses that require visibility from either the east side or west side. That is the reason why when the Dodge Dealership application came forward, there wasn't a complete change in the text of the zoning ordinance which simply allowed the storage of vehicles for retail display as of right. It created it as a special permit so that the applicant would need to come forward to you & justify to you that in the particular location being proposed. It was appropriate for vehicles to be parked for storage display purposes. Make no doubt about it, there is a drastic difference between displaying vehicles for sale & allowing parking to occur in the front yard. If parking occurs, that means that customers & clients may park there & the parking will only occur at peak times, not continuously. There are a couple pictures that demonstrate what the site looked like shortly after Mr. Cornell acquired it & it was only after our client contacted Building & Safety that these vehicles were removed. That's an additional showing what the impact is in terms of the adjoining property. And one last point in terms of the setback that relates to the Popeye's facilities, at the time the Popeye's facility was constructed at this location in 1979, or thereabouts, there was the concept that access roads would be built in the fronts of these properties in the front yard. This site plan drawing from that time shows the drive that was suppose to intersect these. We don't believe there's any legally recorded documents that require it but it explains the reason why the Popeye's facility was set further back on it's parcel so that it could accommodate these driveways. So, the Popeye's parcel is relatively unique in terms of how it's situated on this site & the need that they feel they need to have for not allowing the vehicles to be displayed in the front yard because of the visibility concerns. I guess I'd turn it over to Mr. Hutchison. [Break in tape.]

Ron Hutchison, Popeye's Chicken, 722 W. "O" St.: It was overwhelming to face them 24 hrs. a day, 7 days a week. It's not like when customers come in & park for a little while & go on. It's almost like we had a fence built out of cars right next to us. And when I learned that the site plan actually called for the cars to be parked back away from the extreme property lines, it was a great relief to me. And I believe that the zoning was probably set up that way to begin with just to protect people in my position. So, that was a great relief & now I'm hoping that that actually holds up. As Peter pointed out, the site plan, the way we built our building, was actually more stringent than what the Red Star

Autoplaza faced. So, I'm asking that you not make it even more less stringent than it already is. When I hear these people testify on his behalf, I believe that's a very easy thing for them to do. They do not stand to have anywhere near the loss we have. Our visibility is tremendously obstructed by this parking of the cars in that front yard area & we suffer a great economic loss if this change, this permit is granted. So, I'm asking that you consider us in this situation. We have the most to lose. I believe you'll also notice that the Super Car Wash & the Dairy Queen were not involved with supporting this change. They are definitely on our side. They have a little bit to lose, we have a lot to lose. I thank you very much.

Mr. Katt: Be happy to answer any questions which the Council may have.

Mr. Camp: Are the cars currently parked then within that prohibited area?

Mr. Hutchison: Yes. At this moment, when I drove by, the cars in front, at least, & on the east & west sides are parked the way they are required by the display area on the current site plan.

Mr. Camp: So, they're set back the 30'?

Mr. Hutchison: Yes, they are. And they look very good as a matter of fact. It looks like you have, as a customer, thinking in terms of the fast food business, it looks inviting. It looks like you can drive in there & you have room to park. It looks like it's easy to drive in the way it is right now.

Rich Wiese, Chair of the W. "O" Area Business Assoc.: I'm here to represent the association & we are against the zoning change that's asked here. I may compliment Vince, at this time, during this application & from the time the Planning Commission denied it, he's set his cars back where they belonged. And, believe me, if all car dealers did that up & down "O" St. in the H-3 zoning, they would see their cars a lot quicker because they'd be further away with more setbacks & it would be helpful all the way along. I understand each car dealer wants to get his cars as close as possible. I just visited one of the sites on way W. "O" St. last week & it's where rezoning from a residential into automobile sales & he actually had his car over on where there would be a sidewalk if there was a sidewalk there. He was encroaching all that he possibly could. And if you let everybody encroach out there then we might as well change the H-3 zoning to whatever would allow them to park that close. I think that the businesses out there have worked strong within the last few years to make their place more appropriate in looks to the business as it goes. There's great stride out there in many businesses to be...developed now or in the building process. And I could probably just name a few of them here, within the future, in the business down there, there'll probably two motels that's in the making now. Maybe you've heard about them, maybe not. But we have. There's another two filling stations coming in in that area. There's a McDonald's, a Burger King. There's a new office building. And the new fire hall that the firemen built for wedding receptions or things of that nature down in that business area. It's not on "O" St. but it's right off of it. There's a new proposed bank coming in down there just right on "P" St. where if they don't abide by the H-3 zoning on "P" St., the same as "O" St., then those cars are going to be right up the "P" St. again & will hinder the construction of that bank & someday they'll probably come forward to you & ask you if you can change that zoning back to where it is today. As you know, the ballfield is located down in that area so looks coming into the City is going to be very attractive if the H-3 zoning is kept today. There'll be W. "O" St., there's a beautification program has been put together by you, the City. The W. "O" Beautification project people which turned into W. "O" Area Business Assoc. & that's coming along. We've planted trees. We intend to do more. We intend to put a sign saying "Welcome to the City of Lincoln" & it'll have the proposed or the present Mayor's name or the Mayor's as they come forward in many years to come. We just are working with the State & with the City on that through the Mayor's Office, hope we can find a right location & have that built. I just don't think it's proper. We've worked too hard to get the new street where it's at today & if you

keep encroaching on it, the businesses that are living within the R-3 zoning setback will definitely be a fence line, as they said earlier, to get to those places. I watch some of the traffic down "O" St., how it happens. And twice I saw near collisions because the automobiles were parked so close to the street by this applicant that when they wanted to turn into Popeye's they slammed on the brakes & the car behind them almost hit them. If those cars would've been back further, I'm sure the driver of that car would've seen Popeye's, in this particular case, sooner or any other place they may want to turn into out there. I ask you don't let the encroachment take place out there. West "O" is just as important to this City as what E. "O" or any other street is in this City & it must've been designed for one reason for H-3 & I'm sure it's to have the setbacks that's required. I'd like to show you, on the map, what they would probably look like. It's not very bright & I don't know why but, nevertheless, if you let them encroach, you can see what it would look like. Now, take into consideration if those cars, as they were parked along there were almost twice that distance back, or the 30' that they should, how much more appealing that would be up & down "O" Street. I don't think it's fair to the businesses out there to encroach like this without having the whole street rezoned. So, if you have any questions, I'd be glad to answer the questions for you.

Ms. McRoy: Maybe you know offhand how many car dealers are on W. "O"?

Mr. Wiese: Annette, I really don't know. I know that the association has gone to every business place up & down "O" St., asked them to join the association. There hasn't a single car dealer come forward that wants to join the association. Why I don't know. This last year we even gave them all free membership for one year thinking maybe they would come, maybe they'd want to renew it but that's not taking place. For some reason, the automobile dealers, & I'm not saying all, but it appears like they have their own agenda & they don't want to share that with us. I don't know how many dealers there are. I really don't. I do know that what you heard today, there's more than what you heard today & I can understand why they'd come forward. They want to encroach the same way. In fact, they are doing that today. And we hope our association can work with the City in making "O" St. what it was planned for, what it was designed for & what it should be.

Ms. Seng: Rich, how many of the people that came forward to testify today are members of the Business Association?

Mr. Wiese: None of them.

Ms. Seng: None?

Mr. Wiese: No. We wish they were because the dues are not very much & maybe this could've been talked over long before they become forward to the association, maybe a plan could be worked out some way. I don't know. But I just ask you to hold onto the zoning what's there & let's let the street be kept in a nice way. We want to continue the beautification project. Yes?

Mr. Cook: Actually, I want to ask Staff something when you're done but thank you.

Ms. Seng: You want to ask Staff?

Mr. Cook: Staff. I have a question for Staff. When was a text change made to the zoning ordinance to allow this special permit?

Mr. Hill: Let me check the Staff Report here. In 1979, or, excuse me 1997.

Mr. Cook: 1997, okay. And so, up until that time, you couldn't park cars that close, you had to be 30' back?

Mr. Hill: That's right.

Mr. Cook: Okay, thank you.

Mr. Hill: The parking of cars is considered to be part of the main use is the reason for that. And the main use is...

Ms. Seng: Say that again, why?

Mr. Hill: Sale of automobiles is considered the main use of the used car lot.

[From audience]: Would it be possible I could make one comment?

Ms. Seng: Have you testified before today?



[From audience]: I have.

Ms. Seng: I think we're trying not to have repetitive...

[From audience]: I understand that but something was brought up that (inaudible).

Ms. Seng: Perhaps the attorney speaking for the applicant can repeat it for you. Okay, this is time for rebuttal. Now, just a minute, here's someone else.

Mr. Rierden: He's part of my rebuttal.

Ms. Seng: Oh, okay.

Mr. Rierden: As a way of introduction, this is Vince Cornell & he just wanted to make a couple of comments to you. And I'll be brief. I know you've had a long meeting. Mister Wiese who's a friend of mine, has been a client of mine in the past, has made some good points & he makes a good representative of the W. "O" Business Assoc. but I think they're missing the point on this one. First of all, again, as I told you before, Mr. Cornell can park vehicles in the front yard. It's just not for display or sale purposes. There's nothing in the ordinance that says it has to be for clientele or for employees. He can go out there today. He's been a good citizen &, on my recommendation, he's gone along with not parking vehicles in this area & he wants to see this matter resolved. As far as the W. "O" Business Assoc., I was just told that several of the people that spoke really didn't know of the business organization itself. And one of the people that spoke is J.D. Byrider is a member of the association. So, there's some confusion on that particular point. Mister Katt made a point that on the Dodge, he tried to differentiate the Lincoln Dodge situation that there are no businesses on either side. That's not true. There is the Surplus Center which is on the east side & there is also a restaurant on the other side. Vince, what's the name of that restaurant?

Lee Vincent Cornell, Red Star Auto, 702 W. "O" St.: Red Fox.

Mr. Rierden: Red Fox Restaurant. We believe we did show...we have shown justification. It's either a matter of doing it right like we are here & doing the landscaping which I think will be an improvement to W. "O" Street. Mister Katt showed you a photograph of the side yard where vehicles were parked up to Popeye's & the common lot line between them. We're not asking for a sideyard waiver. We're simply asking for a front yard waiver. He made reference to an easement for an access road or a service road. I represented a lot of the businesses when we went through the W. "O" improvement, oh, 10-15 yrs. ago & that started out just like a lot of our projects do around here with raised medians & you can imagine the uproar that took place with the raised medians & that was one of the theories proposed & we'll have service or access roads to get to the median cuts. Well, most of W. "O" St. is painted medians & not raised medians except around the major intersection areas. I think that's all I have & Vince would like to relay some points to you.

Mr. Cornell: The last 15 yrs., I've been a car dealer in that immediate area & I believe that car dealers are a vital part of Lincoln's business. I think the facts speak for themselves. There's 24 businesses that've signed this petition in the immediate area. The only one opposing is Popeye's. And of the 24 businesses they are non-car dealers outside of myself, J.D. Byrider, & Sunset Motors. And we're talking the immediate area. So, I think it's overwhelming in favor by the business population there. The pictures that Mr. Katt showed, they were from February to June when I had my temporary building being built. I was on that side of the Popeye...Popeye's west side. One of the reasons they were over there 'cause half of my lot was under construction with the new building which he did not show. Mister Wiese made a few statements that aren't true. Number one, the businesses...I don't block Popeye's view. My building is back 40' from the front of Popeye's property. My cars have been back since August when Mr. Rierden told me to move them back. They have not been up there at all in the sideyards or the frontyards & if any of you have drove by the property, you'll know this. I'm trying to do it the right way. The only time they were up there was for the demonstration picture that Mike showed earlier. My landscaping is done. I've planted the two trees. I plan on sodding out front this summer. And I just think

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that it's a good thing for the community & I've done a real well effort in trying to beautify the area. Any questions?

Ms. Seng: Thank you though. Okay, Paul, Jeff wants to ask Planning.

Mr. Fortenberry: Is it acceptable to park in a parallel fashion in this front yard area?

Mr. Hill: Sure. It doesn't describe how you can park there. Parking is permitted in the front yard in the H-3 Dist.

Mr. Fortenberry: For display?

Mr. Hill: Oh, for display purposes? Again, in their site plan, they would show us how they would park on that. I don't believe that they were proposing to park parallel. They were going to be parking perpendicular to "O" Street. That's what their site plan showed anyway.

Mr. Fortenberry: What I'm suggesting, though, is they've suggested that they can do this right now, park parallel without any special permit. Maybe I didn't understand some of that.

Mr. Hill: Okay. No, they are not allowed by right to display cars for sale in the front yard. They can park...parking is permitted in the H-3 front yard but it's display of automobiles for sale is considered to be the main use & parking, as we define it, for customers & clients & employees. That's an accessory to the use.

This matter was taken under advisement.

AMENDING THE ORIGINAL ENGINEERING AGRMT. TO ALLOW HWS CONSULTING GROUP, INC., TO TAKE RESPONSIBILITY AS THE PRIME CONSULTANT ON THE SOUTH & EAST BELTWAY STUDIES. (IN CONNECTION W/00R-106);

APPROVING SUPPLEMENTAL AGRMT. #4 BETWEEN THE CITY, COUNTY, & STATE TO SUBSTITUTE HWS CONSULTING GROUP, INC. AS THE PRIME CONSULTANT FOR THE PROVISION OF ENGINEERING SERVICES ASSOCIATED WITH THE SOUTH & EAST BELTWAYS STUDIES. (IN CONNECTION W/00R-105) - Mr. Figard: Shortly after the South & East Beltway Study was started & the City entered into a contract with Wilbur Smith as the primary consultant, it became very obvious that the scope needed to be revised significantly. And, at the encouragement & direction of City Council & the County Commissioners, we added Jim Linderholm & HWS to take a much larger & greater role in the leadership & the bringing forward of that study. That was done really informally with an agreement between Wilbur Smith & HWS. Shortly before the first of this year, we acknowledged that the consultants were willing & the City was interested in formalizing that into a legal contract to make that physical change & I think that Jim & I had sent a letter out towards the first of the year to that effect. So, the two items that are before you today, the first one is an agreement between Wilbur Smith, HWS & the City of Lincoln that names HWS as the primary consultant, the owner now of that engineering contract. The second document in front of you is the Interlocal Agrmt. with our partners in the study, the Nebraska Dept. of Roads, Lancaster County, in which they have signed that Interlocal Agrmt. concurring in support of that formal change naming HWS as the primary consultant & the owner of that engineering contract. Wanted to make it perfectly clear, the items before you today have nothing to do with schedule or resources, it simply is the formal & legal naming of HWS as the owner of that study contract. And Jim Linderholm, President of HWS, is here if you have any questions of him. And I would entertain any questions you might have.

This matter was taken under advisement.

MISCELLANEOUS BUSINESS

Mike Morosin, 2055 "S" St., Past President of Malone Neighborhood Assoc., came forward re: property at 2224 Y St. where a driveway was taken out & it was not replaced; dirt was left in its place; water has been leaking there for months now; business owner has talked to Public Works & no resolution yet.

Dr. William T. Griffin, 2012 Greenbriar Ln., Unit 9, came forward re: pre-hospital care provided at the scene of an accident; believes

doctors who eventually take care of the patient should have the most impact on that; thinks it's the City's responsibility to assure that the best trained & most experienced person is at the patient's side at this extremely critical time; can accomplish this by following the standards established by the Medical Directives Board of the Lancaster County Medical Society & approved by the Emergency Medical Service Board; the Independent Medical Oversight Board should provide the oversight to assure such care is continually provided to the patient; evaluation should be in a totally non-political atmosphere using the Proposal for the Independent Medical Oversight for the Pre-Hospital Emergency Care submitted by the Lancaster County Medical Society dated March 20th; this has been reviewed & approved by the following organizations: Lancaster County Medical Assoc., Bryan Memorial/LGH Medical Center, St. Elizabeth Regional Medical Ctr., Madonna Rehab. Hospital, & the Tabitha Health Care Services; a resolution approving this document by this organization is available for your perusal; strongly recommended that the Council pass a similar resolution. These matters were taken under advisement.

#### ORDINANCES - 3RD READING

VACATING THAT PORTION OF 11TH ST. LYING BETWEEN THE NORTH R-O-W LINE OF Y ST. & THE NORTHWESTERLY LINE OF BURLINGTON NORTHERN R.R. R-O-W IN THE NE¼ OF SEC. 23, T10N, R6E - CLERK read an ordinance, introduced by Coleen Seng, vacating a portion of 11th St. lying south of "Y" St., & retaining title thereto in the City of Lincoln, Lancaster County, Nebraska, the third time.

SENG Moved to pass the ordinance as read.

Seconded by Johnson & **LOST** by the following vote: AYES: None; NAYS:: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft.

The ordinance, having **LOST**, was assigned File #38-4336 & was placed on file in the Office of the City Clerk.

VACATING THE ALLEY NORTH OF W. C ST. & WEST OF SW 1ST ST. - PRIOR to reading:

COOK Moved to delay Action with Public Hearing on Bill 98-104 for 1 week to 4/17/00.

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

CLERK Read an ordinance, introduced by Cindy Johnson, vacating the alley north of W. "C" St. & west of SW 1st St., & retaining title thereto in the City of Lincoln, Lancaster County, Nebraska, the third time.

#### ADMINISTRATIVE FINAL PLATS & SPECIAL PERMITS

WAIVING THE PUBLIC STREET PAVING DESIGN STANDARDS FOR FRANKLIN ST. & WAIVING THE SIDEWALK REQUIREMENTS ALONG THE NORTH SIDE OF FRANKLIN ST. BETWEEN S. 51ST ST. & S. 52ND ST. IN THE MCMANAMAN'S ADD. ADMIN. FINAL PLAT - PRIOR to reading:

CAMP Moved to delay Action, without Pub. Hearing, for 1 week to 4/17/00.

Seconded by Shoecraft & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

APPEAL OF L. VINCE CORNELL FROM THE PLANNING COMMISSION DENIAL OF SPECIAL PERMIT 1818 FOR AUTHORITY TO PARK & DISPLAY VEHICLES FOR SALE IN THE FRONT YARD ON PROPERTY GENERALLY LOCATED AT 702 W. "O" ST. - CLERK read the following resolution, introduced by Jonathan Cook, who moved its adoption.

Seconded by Johnson & **LOST** by the following vote: AYES: Camp, Johnson, Seng; NAYS:: Cook, Fortenberry, McRoy, Shoecraft.

The resolution, having **LOST**, was assigned File #38-4334 & was placed on file in the Office of the City Clerk.

PETITIONS & COMMUNICATIONS

UNL-MICROBIOLOGIST REPORT OF WATER TESTED FOR THE MONTH OF MARCH, 2000 - CLERK presented said report which was placed on file in the Office of the City Clerk. (35-01)

REPORTS TO CITY OFFICERS

CLERK'S LETTER & MAYOR'S APPROVAL OF ORDINANCES & RESOLUTIONS PASSED ON MAR. 27, 2000 - CLERK presented said report which was placed on file in the Office of the City Clerk.

INVESTMENT OF FUNDS - CLERK read the following resolution, introduced by Jonathan Cook, who moved its adoption:

A-80113 BE IT HEREBY RESOLVED BY THE CITY COUNCIL of the City of Lincoln, Nebraska:

That the attached list of investments be confirmed & approved, & the City Treasurer is hereby directed to hold said investments until maturity unless otherwise directed by the City Council. (Investments beginning 03/31/00)

Introduced by Jonathan Cook

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

REPORTS FROM CITY TREASURER OF TELECOMM. OCC. TAX DUE FOR THE MONTH OF FEB., 2000 FROM: IBM Global Services, Broadwing Telecomms., LCI Internat'l, Working Assets Funding Service, Coast Internat'l, Intellicall Operator Services, Excel Telecomms., Calls for Less, & Trans National Comms., MCI Telecomms., Nebraska Technology & Telecomms., Aliant Comms., Aliant Cellular dba Alltel, & Global Crossing Telecomms. fka Fronter Comms. - CLERK presented said report which was placed on file in the Office of the City Clerk. (20)

REQUEST OF PUBLIC WORKS TO SET THE HEARING DATE OF MON., APRIL 24, 2000 AT 6:30 P.M. & PLACE ON THE FORMAL CITY COUNCIL AGENDA THE FOLLOWING:

00-80 To provide authority to create a Water Dist. to construct a 16" & 8" water in 33rd St. from Superior St. north to approx. Meridian Dr.

00-81 To provide authority to create a Paving Dist., in 33rd St. from Superior St. north to approx. Meridian Dr.

JOHNSON Moved approval.

Seconded by Camp & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

LINCOLN WATER & WASTEWATER SYSTEM RECAPITULATION OF DAILY CASH RECEIPTS FOR MARCH, 2000 - CLERK presented said report which was placed on file in the Office of the City Clerk. (8-71)

OTHER RESOLUTIONS

APP. OF 210 N. 7TH ST. LLC DBA DINAPOLI RISTORANTE & VINERIA FOR A RETAIL CLASS I LIQUOR LICENSE AT 201 N. 7TH ST. - CLERK read the following resolution, introduced by Cindy Johnson, who moved its adoption for approval:

A-80106 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That after hearing duly had as required by law, consideration of the facts of this application, the Nebraska Liquor Control Act, & the pertinent City ordinances, the City Council recommends that the App. of 201 N. 7th St., L.L.C. dba DiNapoli Ristorante & Vineria for a Class I liquor license at 201 N. 7th St., Lincoln, Nebraska, for the license period ending April 30, 2000, be approved with the condition that the premise complies in every respect with all city & state regulations. The City Clerk is directed to transmit a copy of this resolution to the Nebraska Liquor Control Commission.

Introduced by Cindy Johnson

Seconded by Camp & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

MAN. APP. OF TIMOTHY PAUL BURKE FOR 201 N. 7TH ST., LLC. DBA DINAPOLI RISTORANTE & VINERIA AT 201 N. 7TH ST. - CLERK read the following resolution, introduced by Cindy Johnson, who moved its adoption for approval:

A-80107 WHEREAS, 201 N. 7th St., L.L.C. dba Di Napoli Ristorante & Vineria located at 201 N. 7th Street, Lincoln, Nebraska has been approved for a Retail Class "I" liquor license, & now requests that Timothy Paul Burke be named manager;

WHEREAS, Timothy Paul Burke appears to be a fit & proper person to manage said business.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That after hearing duly had as required by law, consideration of the facts of this application, the Nebraska Liquor Control Act, & the pertinent City ordinances, the City Council recommends that Timothy Paul Burke be approved as manager of this business for said licensee. The City Clerk is directed to transmit a copy of this resolution to the Nebraska Liquor Control Commission.

Introduced by Cindy Johnson

Seconded by Camp & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

REAPPOINTING JAMES MCKEE, JERRY BERGGREN, & TIM FRANCIS TO THE HISTORIC PRESERVATION COMMISSION FOR 3-YR. TERMS EXPIRING APRIL 15, 2003 - CLERK read the following resolution, introduced by Jonathan Cook, who moved its adoption:

A-80108 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the appointment of James McKee, Jerry Berggren, & Tim Francis to the Historic Preservation Commission for 3-yr. terms expiring April 15, 2003 is hereby approved.

Introduced by Jonathan Cook

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

ACCEPTING FUNDING SUPPORT FROM THE RAILROAD TRANSPORTATION SAFETY DIST. (RTSD) FOR THE ANTELOPE VALLEY STUDY - CLERK read the following resolution, introduced by Jonathan Cook, who moved its adoption:

A-80109 WHEREAS, the Interlocal Cooperation Act, Neb. Rev. Stat. § 13-801, et seq., permits local governmental units to cooperate with other such units to make the most efficient use of their powers on the basis of mutual advantage; &

WHEREAS, the City of Lincoln, Nebraska (City) & the Lincoln-Lancaster County Railroad Transportation Safety Dist. (District) desire to cooperate together in the major investment studies and/or environmental impact studies for the Antelope Valley MIS Study; &

WHEREAS, the District agrees to continue to participate in the project & has additional budgeted funds in its 1999-2000 budget for such participation; &

WHEREAS, the District will pay the City up to \$350,000.00 to be applied to preparation of said studies for the project; & the City will bill the District up to \$350,000.00 as expenditures are incurred by the City for such studies.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the Agrmt. between the City & the District attached hereto as Attachment A in connection with the Antelope Valley MIS Study in Lincoln, Lancaster County, Nebraska, is hereby approved & the Mayor is authorized to execute said the same on behalf of the City.

Introduced by Jonathan Cook

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

APPROVING A CONSENT AGRMT. BETWEEN THE CITY & THE U.S. ENVIRONMENTAL PROTECTION

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AGENCY TO SETTLE ANY PENDING CLAIMS OF ENVIRONMENTAL VIOLATIONS AT TRANSPORTATION ENGINEERING SERVICES AT 901 N. 6TH ST. - CLERK read the following resolution, introduced by Jonathan Cook, who moved its adoption:

A-80110 WHEREAS, the Environmental Protection Agency (EPA) had previously alleged a regulatory violation occurred at the Traffic Engineering Facility in 1998 related to several opened cans of paint; &

WHEREAS, the EPA had initially indicated a fine in the amount of \$104,539; &

WHEREAS, the City & EPA have negotiated a settlement of the fine & issues that are related to the alleged violations.

NOW, THEREFORE, BE IT RESOLVED by the City of Lincoln, Nebraska:

That the Consent Agrmt. & Final Order, a copy of which is attached & incorporated herein, between the EPA & the City of Lincoln, whereby the City would pay a mitigated penalty in the amount of \$6242.50 & perform two Supplemental Environmental Projects as described therein, is hereby approved & the Mayor is authorized to execute the same & any amendments thereto.

Introduced by Jonathan Cook

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

AMENDING THE ORIGINAL ENGINEERING AGRMT. TO ALLOW HWS CONSULTING GROUP, INC., TO TAKE RESPONSIBILITY AS THE PRIME CONSULTANT ON THE SOUTH & EAST BELTWAY STUDIES. (IN CONNECTION W/00R-106) - CLERK read the following resolution, introduced by Jonathan Cook, who moved its adoption:

A-80111 WHEREAS, the City of Lincoln, Wilbur Smith Assocs., & HWS Consulting Group Inc. have previously entered into an Agrmt. for Engineering Consulting Services in conjunction with the South & East Beltway Studies; &

WHEREAS, the parties' original Engineering Agrmt. has been twice amended by Supplemental Agrmt. #1, dated November 18, 1996, & Supplemental Agrmt. #2, dated May 4, 1999; &

WHEREAS, pursuant to the terms of the Original Engineering Agrmt. & Supplemental Agrmt. Nos. 1 & 2, Wilbur Smith Assocs. served as the prime consultant for the South & East Beltway Studies while HWS Consulting served as the sub-consultant & local contract manager; &

WHEREAS, Wilbur Smith Assocs. has satisfactorily completed its scope of services & the parties desire to substitute HWS as the prime consultant for the completion of the South & East Beltway Studies in place of Wilbur Smith Assocs. & HWS Consulting is willing to accept such responsibility & the City of Lincoln concurs with the change of assignments of the respective parties; &

WHEREAS, it now becomes necessary that the Original Engineering Agrmt. & the previous Supplements thereto be again supplemented to provide for the substitution of HWS as the prime consultant for engineering services in place of Wilbur Smith Assocs..

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That Supplemental Agrmt. #3 between the City of Lincoln, Wilbur Smith Assocs., & HWS Consulting Group Inc., which is attached hereto marked as Attachment A, wherein HWS Consulting Group Inc. is being substituted as the prime consultant in place of Wilbur Smith Assocs. for purposes of completing the engineering consulting services in connection with the South & East Beltway Studies is hereby accepted & approved & the Mayor is authorized to execute the same on behalf of the City.

BE IT FURTHER RESOLVED that the City Clerk is directed to return a copy of this Resolution & two executed originals of Supplement Agrmt. #3 to Roger Figard, Dept. of Public Works & Utilities for transmittal to the appropriate parties.

Introduced by Jonathan Cook

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

APPROVING SUPPLEMENTAL AGRMT. #4 BETWEEN THE CITY, COUNTY, & STATE DEPT. OF ROADS TO SUBSTITUTE HWS CONSULTING GROUP, INC. AS THE PRIME CONSULTANT FOR THE

PROVISION OF ENGINEERING SERVICES ASSOCIATED WITH THE SOUTH & EAST BELTWAYS STUDIES. (IN CONNECTION W/00R-105) - CLERK read the following resolution, introduced by Jonathan Cook, who moved its adoption:

A-80112 WHEREAS, the City of Lincoln, the County of Lancaster, & the State of Nebraska acting through the Dept. of Roads have entered into an Agrmt. to provide for Federal funding for an Intermodal Corridor Study south & east of Lincoln, & Supplemental Agrmt. Nos. 1, 2, & 3, thereto; &

WHEREAS, the City previously entered into an Agrmt. with Wilbur Smith Assocs. to provide Engineering Consulting Services in connection with the South & East Beltway Studies Project No. DPU-3300(1); &

WHEREAS, HWS Consulting Group of Lincoln was named as a sub-consultant in the Original Agrmt. between the City & Wilbur Smith Assocs.; &

WHEREAS, due to significant changes in the performance of the project work associated with the South & East Beltway Studies, the technical work of the scope of services to be provided by Wilbur Smith Assocs. pursuant to the Original Agrmt. has decreased substantially; &

WHEREAS, HWS Consulting Group Inc. has assumed a more prominent role in the oversight of the Project & in the provision of consulting services associated therewith; &

WHEREAS, it is in the best interest of the City, Wilbur Smith Assocs., HWS Consulting Group Inc., the County, & the State, for HWS Consulting Group Inc. to assume the prime consulting role in connection with the South & East Beltway Studies; &

WHEREAS, the City, County, & State are willing to allow the substitution of HWS Consulting Group Inc. as the prime consultant for engineering services associated with the South & East Beltway Studies.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That Supplemental Agrmt. #4 between the City of Lincoln, the County of Lancaster, & the State of Nebraska acting by & through its Dept. of Roads, which is attached hereto marked as Attachment "A", wherein HWS Consulting Group Inc. is substituted as the prime consultant for the provision of engineering services in place of Wilbur Smith Assocs. is hereby accepted & approved & the Mayor is authorized to execute the same on behalf of the City.

BE IT FURTHER RESOLVED that the City Clerk is directed to return a copy of this Resolution & two executed originals of Supplement Agrmt. #4 to Roger Figard, Dept. of Public Works & Utilities for transmittal to the appropriate parties.

Introduced by Jonathan Cook

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

APPROVING AN EXCEPTION TO THE GUIDELINES & REGULATIONS FOR DRIVEWAY DESIGN & LOCATION REQUIREMENTS OF VEHICLE STACKING FOR LINCOLN FEDERAL SAVINGS AT 70TH & "O" STS. - CLERK read the following resolution, introduced by Jonathan Cook, who moved its adoption.

Seconded by Johnson & **LOST** by the following vote: AYES: None; NAYS: Camp, Cook, Fortenberry, Johnson, McRoy, Seng.

The resolution, having **LOST**, was assigned File #38-4335 & was placed on file in the Office of the City Clerk.

#### ORDINANCES - 1ST & 2ND READING

APPROVING A CONTRACT BETWEEN THE CITY & THE LINCOLN HAYMARKET DEVELOPMENT CORP. TO OPERATE & REGULATE A SATURDAY PUBLIC MARKET IN THE HAYMARKET AREA FROM MAY 6 THRU OCT. 28, 2000 - CLERK read an ordinance, introduced by Jonathan Cook, accepting & approving the contract between the City of Lincoln, Nebraska, a municipal corporation, & the Lincoln Haymarket Development Corporation for establishment & regulation of a Saturday public market in the Haymarket area from May 6, 1999 through Oct. 28, 2000, & authorizing the Mayor to sign such contract on behalf of the City, the first time.

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AMENDING SEC. 9.16.240 OF THE LMC RELATING TO SEXUAL CONTACT TO ADD LOCATIONS IN WHICH THIS ORDINANCE DOES NOT APPLY, REDEFINING THE PHRASE "SEXUAL CONTACT" & REPEALING 9.16.20 AS HITHERTO EXISTING - CLERK read an ordinance amending Sec. 9.16.240 of the LMC relating to sexual contact to add locations in which this ordinance does not apply & to redefine the phrase "sexual contact"; & repealing Sec. 9.16.240 of the LMC as hitherto existing, the first time.

RENAMING LAKEVIEW DR. AS "PHARES DR." IN THE EDENTON NORTH 5TH ADD. GENERALLY LOCATED SOUTH OF PIONEERS BLVD. BETWEEN S. 70TH & S. 84TH STS. - CLERK read an ordinance, introduced by Jon Camp, changing the name of Lakeview Dr. to "Phares Dr." located in the Edenton North 5th Add. generally south of Pioneers Blvd. between S. 70th & S. 84th Sts., as recommended by the Street Name Committee, the second time.

CHANGE OF ZONE 3196 - APP. OF THE INTERIM PLANNING DIRECTOR FOR A CHANGE FROM B-1 LOCAL BUSINESS & R-3 RESIDENTIAL TO B-2 PLANNED NEIGHBORHOOD BUSINESS & FROM R-3 RESIDENTIAL TO AGR AGRICULTURAL RESIDENTIAL, ON PROPERTY GENERALLY LOCATED AT S. CODDINGTON AVENUE & WEST VAN DORN ST. (IN CONNECTION W/00-66, 00-67, 00-68) - CLERK read an ordinance, introduced by Jon Camp, amending the Lincoln Zoning Dist. Maps attached to & made a part of Title 27 of the LMC, as provided by Sec. 27.05.020 of the LMC, by changing the boundaries of the districts established & shown thereon, the second time.

CHANGE OF ZONE 3210 - APP. OF THE INTERIM PLANNING DIRECTOR FOR A CHANGE FROM R-3 RESIDENTIAL TO AGR AGRICULTURAL RESIDENTIAL ON PROPERTY GENERALLY LOCATED AT THE SOUTHWEST CORNER OF S. CODDINGTON AVE. & W. VAN DORN ST.; FROM R-3 RESIDENTIAL TO AG AGRICULTURAL ON PROPERTY GENERALLY LOCATED SOUTH OF W. VAN DORN ST., EAST OF CODDINGTON AVE., & WEST OF THE BNRR RIGHT-OF-WAY; & FROM R-3 RESIDENTIAL TO P PUBLIC USE ON PROPERTY GENERALLY LOCATED SOUTHEASTERLY OF THE BNRR RIGHT-OF-WAY SOUTH OF W. VAN DORN, NORTH OF W. CALVERT, & EAST OF S.W. 15TH ST. EXTENDED NORTH OF W. CALVERT ST. (IN CONNECTION W/00-65, 00-67, 00-68) - CLERK read an ordinance, introduced by Jon Camp, amending the Lincoln Zoning Dist. Maps attached to & made a part of Title 27 of the LMC, as provided by Sec. 27.05.020 of the LMC, by changing the boundaries of the districts established & shown thereon, the second time.

CHANGE OF ZONE 3247 - APP. OF THE INTERIM PLANNING DIRECTOR FOR A CHANGE FROM AGR AGRICULTURAL RESIDENTIAL & R-3 RESIDENTIAL TO B-2 PLANNED NEIGHBORHOOD BUSINESS, ON PROPERTY GENERALLY LOCATED ON THE SOUTHWEST CORNER OF S. CODDINGTON AVE. & W. VAN DORN ST. (IN CONNECTION W/00-65, 00-66, 00-68) - CLERK read an ordinance, introduced by Jon Camp, amending the Lincoln Zoning Dist. Maps attached to & made a part of Title 27 of the LMC, as provided by Sec. 27.05.020 of the LMC, by changing the boundaries of the districts established & shown thereon, the second time.

CHANGE OF ZONE 3209 - APP. OF THE ASSISTANT PLANNING DIRECTOR FOR A CHANGE FROM I-1 INDUSTRIAL TO R-3 RESIDENTIAL & FROM I-1 INDUSTRIAL, B-1 LOCAL BUSINESS, & H-4 GENERAL COMMERCIAL TO P PUBLIC USE, ON PROPERTY GENERALLY LOCATED AT HWY. 77 & W. VAN DORN ST. (IN CONNECTION W/00-65, 00-66, 00-67) - CLERK read an ordinance, introduced by Jon Camp, amending the Lincoln Zoning Dist. Maps attached to & made a part of Title 27 of the LMC, as provided by Sec. 27.05.020 of the LMC, by changing the boundaries of the districts established & shown thereon, the second time.

CHANGE OF ZONE 3242 - APP. OF JACQUELINE BERNIKLAU TO AMEND SECS. 27.07.020 & 27.07.080 OF THE LMC TO ALLOW PRIVATE SCHOOLS WITH CURRICULA EQUIVALENT TO PUBLIC SCHOOLS, AS A PERMITTED USE IN THE AG AGRICULTURAL DISTRICT - CLERK read an ordinance, introduced by Jon Camp, amending Secs. 27.07.020 & 27.07.080 of the LMC to allow private schools with a curriculum equivalent to public schools as a permitted use in the AG Agriculture Dist.; & repealing Secs. 27.07.020 & 27.07.080 of the LMC as hitherto existing, the second time.



CHANGE OF ZONE 3243 - APP. OF NEBRASKA NEON SIGN COMPANY TO AMEND SEC. 27.69.044 OF THE LMC TO ADJUST THE LANGUAGE WITH REGARDS TO SIGNS IN THE O-3 DIST. TO ALLOW ON-PREMISES WALL SIGNS & ON-PREMISES PROJECTING SIGNS NOT TO EXCEED 10% COVERAGE PER FACADE OR A TOTAL OF 250 SQ. FT., WHICHEVER IS LESSER; TO ALLOW GROUND SIGNS PER VEHICULAR ENTRANCE INTO THE OFFICE PARK TO BE LOCATED IN THE REQUIRED FRONT YARD & TO ALLOW SAID GROUND SIGN TO ALSO IDENTIFY THE NAME OF THE TENANTS; TO ALLOW A 15 SQ. FT. GROUND SIGN AT EACH BUILDING ENTRANCE; & TO ALLOW THE CITY COUNCIL TO MODIFY THE GROUND SIGN & THE INTERNAL DIRECTIONAL SIGN REGULATIONS IN CONNECTION WITH THE GRANTING OF A USE PERMIT - CLERK read an ordinance, introduced by Jon Camp, amending Sec. 27.69.044 of the LMC relating to permitted signs in the O-1, O-2, & O-3 Zoning Dists. to adjust the language with regards to signs in the O-4 Dist. to allow on-premises wall signs & on-premises projecting signs not to exceed 10% coverage of the wall face or a total of 250 sq. ft. per building facade, whichever is lesser; to allow the ground signs at the vehicular entrance into an office park to be located in the required front yard with a minimum spacing of 50' from any other ground or pole sign & to allow said ground sign to also identify the name of the tenants; to allow a 15 sq. ft. ground sign at each building entrance; & to allow the City Council to modify the ground sign & the internal directional sign regulations in connection with the granting of a use permit; & repealing Sec. 27.69.044 of the LMC as hitherto existing, the second time.

CHANGE OF ZONE 3244 - APP. OF HEP, INC. FOR A CHANGE FROM H-3 HWY. COMMERCIAL TO I-1 INDUSTRIAL ON PROPERTY GENERALLY LOCATED AT NW 27TH & INTERSTATE 80 - CLERK read an ordinance, introduced by Jon Camp, amending the Lincoln Zoning Dist. Maps attached to & made a part of Title 27 of the LMC, as provided by Sec. 27.05.020 of the LMC, by changing the boundaries of the districts established & shown thereon, the second time.

CHANGE OF ZONE 3245 - APP. OF MANETTE KIDNEY FOR A CHANGE FROM AG AGRICULTURAL TO O-2 SUBURBAN OFFICE ON PROPERTY GENERALLY LOCATED AT S. 84TH ST. & OLD CHENEY RD. - CLERK read an ordinance, introduced by Jon Camp, amending the Lincoln Zoning Dist. Maps attached to & made a part of Title 27 of the LMC, as provided by Sec. 27.05.020 of the LMC, by changing the boundaries of the districts established & shown thereon, the second time.

AMENDING SEC. 10.14.200, 10.14.210, & 10.14.220 OF THE LMC TO PERMIT U-TURNS AT SELECT LOCATIONS WHEN PERMITTED BY AN AUTHORIZED TRAFFIC CONTROL DEVICE - CLERK read an ordinance, introduced by Jon Camp, amending Chapter 10.14 of the LMC, Rules of the Rd., by amending Secs. 10.14.200, 10.14.210, & 10.14.220 to allow U-turns at select locations when permitted by an authorized traffic control device; & repealing Secs. 10.14.200, 10.14.210, & 10.14.220 of the LMC as hitherto existing, the second time.

APPROVING A LEASE AGRMT. BETWEEN THE CITY & THE AMERICAN LEGION POST #3 FOR THE LEASE OF SHERMAN FIELD FROM APRIL 1, 2000 THROUGH DEC. 31, 2004 - CLERK read an ordinance, introduced by Jon Camp, approving a Lease between the American Legion Post #3 & the City of Lincoln, Nebraska, for lease of Sherman Field for a period of 5 yrs., the second time.

#### MISCELLANEOUS BUSINESS

##### PENDING LIST -

CAMP Moved to extend the Pending List for 1 week.  
Seconded by Fortenberry & carried by the following vote: AYES:  
Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

##### UPCOMING RESOLUTIONS

APPOINTING JON D. CARLSON TO THE LINCOLN-LANCASTER PLANNING COMMISSION TO FILL

REGULAR MEETING  
APRIL 10, 2000  
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AN UNEXPIRED TERM THROUGH AUG. 24, 2001:

JOHNSON        Moved to suspend the Council Rules to place Bill 00R-125 on the Agenda for Introduction, Pub. Hearing & Action on 4/17/00.

                 Seconded by Camp & carried by the following vote:    AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

CAMP            Moved to approve the resolutions to have Public Hearing on April 17, 2000.

                 Seconded by Fortenberry & carried by the following vote:    AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

**ADJOURNMENT**

**5:15 P.M.**

CAMP            Moved to adjourn the City Council Meeting of April 10, 2000.

                 Seconded by Fortenberry & carried by the following vote:    AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

                 So ordered.

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Paul A. Malzer, Jr., City Clerk

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Teresa J. Meier-Brock, Office Assistant III